COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Strasbourg, 28 November 2014

Secret
CPT (2014) 61

REPORT

TO THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS ON THE VISIT TO THE CARIBBEAN PART OF THE KINGDOM OF THE NETHERLANDS CARRIED OUT BY THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CPT)

FROM 12 TO 22 MAY 2014

Adopted on 7 November 2014

CONTENTS

Copy of the letter transmitting the CPT's report

Prof. Dr. Martin Kuijer
Ministry of Justice
Directorate of Legislation
P.O. Box 20301
NL - 2500 EH The Hague

Strasbourg, 28 November 2014

Dear Mr Kuijer,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I have the honour to enclose herewith the report drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to the Caribbean part of the Kingdom of the Netherlands from 12 to 22 May 2014. The report was adopted by the CPT at its 85th meeting, held from 3 to 7 November 2014.

The various recommendations, comments and requests for information formulated by the CPT are highlighted in bold in the body of the report. As regards more particularly the CPT's recommendations, having regard to Article 10, paragraph 1, of the Convention, the Committee requests the Dutch authorities to provide within **six months** a response giving a full account of action taken to implement them.

The CPT trusts that it will also be possible for the Dutch authorities to provide, in the above-mentioned response, reactions to the comments and requests for information formulated in this report.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours sincerely,

Lətif Hüseynov
President of the European Committee for the
Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

EXECUTIVE SUMMARY

The Netherlands Antilles ceased to exist on 10 October 2010, when Curaçao and Sint Maarten acquired the status of countries within the Kingdom, alongside the Netherlands and Aruba. The three other islands, Bonaire, Sint Eustatius and Saba became part of the Netherlands with the equivalent status of a municipality. Collectively, the six islands are now known as the Caribbean part of the Kingdom of the Netherlands.

The CPT's delegation visited Bonaire, Aruba, Curaçao and Sint Maarten. It examined the treatment of inmates and the conditions of detention in the prison establishments located on each of the four islands visited. It also focussed on the situation of persons deprived of their liberty by the police. In addition, on Aruba and Curaçao, the delegation looked at the treatment of involuntary patients placed in psychiatric facilities and of irregular migrants in immigration detention centres. The situation of juveniles deprived of their liberty was also examined.

The delegation received very good co-operation from the relevant authorities during the visit. Nevertheless, the principle of cooperation also requires that decisive action be taken to improve the situation in the light of the CPT's key recommendations, and the findings of the 2014 visit suggest that while progress could be identified on a number of issues, continued efforts are needed to ensure full implementation of all its recommendations.

Policing

No allegations of ill-treatment by police officers of arrested persons were received in Bonaire. However, in Aruba, Curaçao and Sint Maarten some allegations of ill-treatment of persons, including of juveniles, were received, which usually consisted of kicks and punches to the body after the person had been handcuffed and brought under control. The authorities should regularly remind police officers to use no more force than is strictly necessary and that ill-treatment will be punished accordingly. Further, the duration of remand detention on police premises, which may last up to 10 days, should be reduced to the shortest amount of time possible. As regards more specifically Curaçao, full authority for the care of police detainees placed in Block 1 of the Centre for Detention and Correction in Curaçao (SDKK) should be transferred to the prison authorities.

In relation to safeguards against ill-treatment by police officers, most detained persons interviewed only met with their lawyer for the first time when appearing before a judge, which could be up to three days and 16 hours after the initial arrest. Steps should be taken to guarantee the right of access to a lawyer in practice, including during any police interview, as from the very outset of deprivation of liberty. Further, steps should be taken to guarantee that all detained persons are able to notify a third party of their deprivation of liberty and receive feedback from police officers when such notification has been carried out by the police.

Material conditions were poor in many of the police stations visited as well as in Block 1 at SDKK. In Aruba, the CPT's delegation had been informed that San Nicolas Police Station was not used for overnight detention which turned out to be incorrect. Persons were being detained for several days in this station, including a 15-year old boy who spent ten days in conditions that could be considered as amounting to inhuman and degrading treatment. The CPT recommends that the detention cells at San Nicolas Police Station be taken out of use until such time as they have been fully refurbished and the sewage problems properly resolved. More generally, juveniles should not be held overnight in police stations. Further, in Aruba and Curaçao, the current practice of keeping detained persons, deemed to be at risk of suicide, naked in their cells should be ended; instead, such persons should be the subject of a specific care protocol.

In Sint Maarten, urgent measures should be taken to improve conditions at Philipsburg Police Station, and steps taken to ensure that persons are not detained in excess of three days and in any event never longer than 10 days at this station. In Curaçao, two persons had been held in police stations for some eight months in conditions akin to solitary confinement; every effort should be made to find alternative solutions to long-term detention at police stations.

Prisons

The CPT's delegation found that the Dutch Caribbean Correctional Institution (JICN) in Bonaire was well-managed and provided a safe environment with good staff-prisoner relations. Some progress had been made at the three other prisons visited compared to previous visits. However, at the Correctional Institution in Aruba (KIA), SDKK and Point Blanche Prison in Sint Maarten, a number of allegations of ill-treatment of prisoners by staff were received and a clear message should be delivered to prison officers that all forms of ill-treatment, including verbal abuse, are not acceptable and will be punished accordingly. Further, inter-prisoner violence continued to represent a serious threat to prisoners' safety in these three prisons. The prison management in each of these establishments should develop a strategy to address the challenge of inter-prisoner violence, including adequate monitoring of the situation and identification of risks.

As regards material conditions, they were generally very poor at KIA and in several blocks of SDKK, with crumbling walls, dilapidated accommodation areas, leaking pipes and serious sewage problems. Urgent action to improve conditions in the vulnerable persons' unit (IBA) and the segregation unit at KIA and in Block 1 of SDDK is recommended. The CPT raises several concerns with regard to the extensive expansion works at Pointe Blanche Prison and recommends that a coherent strategy to combat overcrowding be put in place, which includes alternative sanctions, conditional release and reduced use of remand custody. Similar proposals are put forward in relation to Bonaire where a new much larger prison facility is being built. More needs to be done in all the prisons visited to ensure prisoners, male and female, are engaged in purposeful activities of a varied nature. As regards contact with the outside world, the CPT recommends that prisoners be granted a minimum of one visit of one hour per week and that inmates be able to receive visits without physical separation in the absence of specific security concerns. Prisoners who are visited infrequently, notably foreign nationals, should be allowed to accumulate visiting time and be granted increased access to the telephone.

With the exception of JICN Bonaire, high levels of staff absenteeism were noted which affected staffing ratios and also led to excessive overtime worked by some prison officers. In order to improve relations between prisoners and staff and increase staff motivation, the reasons for the high levels of absenteeism should be tackled and the capacity and role of prison officers further developed. Further, there is a need to recruit additional staff. The CPT also recommends that in the event of a strike by staff, an agreement guaranteeing a minimum service for inmates should be in place. More generally, the delegation observed gaps in the documentation held by the prison administration, particularly at SDKK. For example, personal custody records were incomplete and no registers were kept with regard to incidents, complaints, use of force and means of restraint.

As regards discipline and segregation, procedural safeguards for prisoners suspected of having committed a disciplinary offence should be strengthened and solitary confinement as a disciplinary punishment should not exceed 14 days. The disciplinary unit of KIA was found to be unfit for holding human beings and, while acknowledging the steps taken by the Aruban authorities to improve the cleanliness and hygiene in this unit, the CPT considers that further action is still required before these cells are adequate for accommodating prisoners. The situation of prisoners segregated for their own protection, notably in Curaçao, should be improved and a specific policy for managing these persons should be drawn up.

The health-care services at KIA and SDKK prisons suffered from financial insecurity, resulting in delays or no access to external specialist care and laboratory testing. Further, at SDKK the situation was more critical as health-care staff and pharmacy bills had not been paid for many months. The provision of health-care services in KIA, SDKK and Pointe Blanche Prisons should be reviewed: medical screening upon admission was generally inadequate, the recording of injuries poor and medical confidentiality not fully respected.

The forensic psychiatric support unit (FOBA) at SDKK offered good material conditions and a positive atmosphere. By contrast, a similar unit at KIA (IBA) offered poor conditions and provided minimal psychological and psychiatric treatment. These units cannot be considered as proper psychiatric institutions appropriate for offenders who have been ordered to undergo psychiatric treatment. Indeed, in all four prisons, the delegation encountered prisoners who were in need of improved mental health care or even placement in a hospital.

Foreign nationals held under aliens legislation

Targeted visits were carried out to the immigration detention facilities of Centro Dakota in Aruba and of Illegalen Barakken in Curaçao. Material conditions could generally be considered as adequate. However, the regime at Illegalen Barakken was particularly restrictive and in both facilities there was a lack of purposeful activities offered to persons held longer than a few days. Further, staff at both facilities had not received any specific training on working with irregular migrants and safeguards, such as a medical screening upon arrival and receiving information in a language an immigration detainee understands, were lacking. Appropriate regulations for the detention of irregular migrants, including the introduction of an effective legal remedy entailing legal assistance, should be developed and adopted.

Juveniles

The situation for young persons at JICN was largely positive; staff were trained to work with juveniles and treated them in a correct and respectful manner, and several programmes were in place to provide meaningful activities for the young prisoners. Nevertheless, care should be taken not to place juveniles with young adults. By contrast, at KIA, the conditions of detention and activities in place for juveniles were not conducive to developing a supportive environment to assist their educational development and the enhancement of their social skills. Moreover, the situation of juveniles held on remand at Philipsburg Police Station in Sint Maarten was totally inappropriate and the CPT trusts that the new 20-place juvenile detention unit will provide suitable alternative arrangements.

At the time of the visit, the closed department of the Judicial Youth Institute of Curaçao (JJIC) was in a very poor state of repair and offered extremely limited purposeful activities. Further, the report is critical of the placement of juveniles in solitary confinement for disciplinary purposes and the lack of safeguards surrounding disciplinary sanctions. The CPT welcomes the subsequent closing down of this unit and the opening of the new Incastraat unit with eight single-occupancy rooms and looks forward to receiving further information on its functioning.

Psychiatric establishments

The CPT's delegation also undertook targeted visits to the psychiatric department (PAAZ) at Dr Horacio Oduber Hospital in Aruba and Klínika Capriles in Curaçao with a focus on involuntarily placed patients. Both facilities were considered to be caring, well-run and supportive, therapeutic establishments. The conditions at PAAZ were generally good whereas the building housing the closed Pico Plata unit at Klínika Capriles was in a state of disrepair and decay.

The procedures regulating involuntary placement at both facilities need to be strengthened, in order to ensure independence, impartiality, and objective medical expertise. Patients should have a right to be heard and be entitled to legal assistance during such procedures as well as a right to appeal any placement decisions. Further, safeguards during placement should be improved, particularly with regard to forced treatment and the possibility to address complaints to an independent external monitoring body. The provision of a patient's rights brochure to all patients at Klínika Capriles was considered a positive practice. More generally, as neither facility was equipped to accept dangerous forensic psychiatric patients and prison is not a suitable environment for them, the authorities are requested to provide information on where such patients can be treated.

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to the Caribbean part of the Kingdom of the Netherlands from 12 to 22 May 2014. The visit was one which appeared to the Committee "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention).

2. The visit was carried out by the following members of the CPT:

- Wolfgang HEINZ (Head of the delegation)
- James McMANUS
- Olivera VULIC
- Hans WOLFF

They were supported by Hugh CHETWYND (Head of Division) and Berber BIALA-HETTINGA of the CPT's Secretariat and were assisted by:

- Vivian LEBLANC (interpreter)
- Manuel MADURO (interpreter)
- Karel THIJS (interpreter).

B. Context of the visit and constitutional structure

3. During the previous CPT visit in 2007, the Kingdom of the Netherlands consisted of three countries: the Netherlands, Aruba and the Netherlands Antilles. The Netherlands Antilles was formed by the islands Bonaire, Curaçao, Sint Maarten, Sint Eustatius and Saba. Between 2000 and 2005, however, all the islands of the then Netherlands Antilles held referenda on the status of each island within the Kingdom and all the islands except Sint Eustatius voted for dissolution of the Netherlands Antilles. The Netherlands Antilles ceased to exist when the amended Charter for the Kingdom of the Netherlands entered into force, on 10 October 2010.

In the new constitutional structure, in accordance with the outcome of the referenda, Curaçao and Sint Maarten have acquired the status of countries within the Kingdom, making them full, autonomous partners within the Kingdom. Aruba retained the separate country status it had already had since 1986.

The three other islands, Bonaire, Sint Eustatius and Saba (hereinafter "the BES islands"), had voted for direct ties with the Netherlands and are now part of the Netherlands, constituting the Caribbean Netherlands (*Caribisch Nederland*). The relationship's legal form is that each island has the status of public body within the meaning of Article 134 of the Dutch Constitution. In broad terms, their position resembles that of Dutch municipalities, with adjustments for their small size, their distance from the Netherlands and their geographic location in the Caribbean region. Their status has been laid down in an Act of Parliament (*Wet Openbare lichamen BES*).

These changes constituted a modification of the internal constitutional relations within the Kingdom of the Netherlands. The Kingdom of the Netherlands accordingly remained the subject of international law with which agreements are concluded. Further, the Charter of the Kingdom, in Articles 3(1)(b) and 43(2), provides that foreign relations and the safeguarding of fundamental human rights and freedoms, legal certainty and good governance are a Kingdom affair.

4. Following the report on the CPT's 2007 visit to Aruba and the Netherlands Antilles, the Council of Ministers for the Kingdom decided on 18 January 2008 to request from both Aruba and the Netherlands Antilles reports on the implementation of the CPT recommendations, in order to identify progress made as well as work that remained to be done. This monitoring was carried out by two legal experts and entailed drawing up reports on a six monthly basis and subsequently yearly reports. The last report was issued in January 2013.[1]

The CPT welcomes this process of direct monitoring of the implementation of its recommendations, considering it good practice. Following the end of this monitoring process and taking into consideration the consequences of the important constitutional changes referred to above and the need to actively pursue the dialogue with the authorities of the Kingdom of the Netherlands and with the various authorities of the Caribbean part of the Kingdom of the Netherlands, the Committee decided to organise an ad hoc visit to the Caribbean part of the Kingdom of the Netherlands.

The main objective of the visit was to examine the treatment of inmates and the conditions of detention in the four prison establishments in the Caribbean part of the Kingdom of the Netherlands. The CPT's delegation also focussed on the situation of persons deprived of their liberty by the police. In addition, on Aruba and Curaçao, the delegation looked at the treatment of involuntary patients placed in psychiatric facilities and of irregular migrants in immigration detention centres. The situation of juveniles deprived of their liberty was also examined.

---

[1] See reports at Parliamentary website of the Kingdom of the Netherlands -*Voortgangsrapportages voor Aruba, Curaçao en Sint Maarten inzake de implementatie en uitvoering van verbeteringen van de detentiefaciliteiten*.

C. Establishments visited

5. The delegation visited the following establishments:

Aruba

- Aruba Correctional Institution (KIA)
- Santa Cruz, Noord and San Nicolas Police Stations
- Centro Dakota Immigration Detention Facility
- Psychiatric Department (PAAZ) of Dr. Horacio Oduber Hospital

Curaçao

- Curaçao Centre for Detention and Correction (SDKK)
- Rio Canario and Barber Police Stations
- Illegalen Barakken Immigration Detention Facility
- Judicial Youth Institute of Curaçao (JJIC)
- Klínika Capriles Psychiatric Institution

Sint Maarten

- Point Blanche Prison
- Philipsburg Central Police Station and Remand Centre
- Simpson Bay Remand Centre

Bonaire

- Dutch Caribbean Correctional Institution (JICN), Location Bonaire

D. Consultations held by the delegation and co-operation encountered

6. In the course of the visit, the delegation held talks with Ivo Opstelten, Minister of Security and Justice of the Netherlands, Arthur Dowers, Minister of Justice of Aruba, Nelson Navarro, Minister of Justice of Curaçao and Dennis Richardson, Minister of Justice of Sint Maarten. The delegation further met Guus Schram, Attorney-General for Curaçao, St. Maarten, Bonaire, Sint Eustatius and Saba and Marc van Erve, Acting Attorney-General for Aruba.

In addition, the delegation met the chiefs of police, directors of prisons and other institutions visited, as well as senior officials in the various ministries of justice and health. It also consulted with representatives of the Council on Law Enforcement and the different prison supervisory committees. A list of the national authorities and civil society members met by the delegation is set out in the Appendix to this report.

7. The delegation received very good co-operation from the relevant authorities during the visit. It was granted full access to all places it wished to visit and to all documentation it wished to consult. It was also able to interview in private persons deprived of their liberty with whom it wished to speak. All staff met by the delegation at the establishments visited made a genuine effort to be helpful and co-operative.

The CPT also wishes to express its appreciation for the excellent assistance provided before and during the visit by the liaison officer, Martin Kuijer, and deputy liaison officers, Clarinda Coert, Marc van Erve, Gimena van der Gen, Patricia Hassell and Ron van der Veer.

8. The principle of co-operation set out in the Convention is not limited to steps taken to facilitate the task of a visiting delegation. It also requires that decisive action be taken, including at the highest political level, to improve the situation in the light of the Committee's key recommendations. The Committee could certainly identify progress on a number of issues, such as a reduction in the allegations of ill-treatment, improved safeguards against ill-treatment by police officers and better material conditions in certain police stations. However, several longstanding recommendations, on issues such as length of police custody, inter-prisoner-violence and staffing levels in prisons, have not been adequately addressed.

The CPT trusts that the relevant authorities will accelerate in the future the implementation of all its recommendations.

E. Immediate observations under Article 8, paragraph 5, of the Convention

9. At the end of the visit the delegation made an immediate observation, in pursuance of Article 8, paragraph 5, of the Convention, as regards the disciplinary cells in the Aruba Correctional Institution, requesting that, until such time as these cells were provided with sufficient access to natural light and adequate ventilation, they should not be used for accommodating prisoners. The delegation further requested a radical improvement of the cleanliness and hygiene in the disciplinary sections.

The immediate observation was confirmed at the meeting with the Aruban authorities on 21 May, at the meeting with the Dutch authorities on 22 May, and by letter of 6 June from the Executive Secretary *ad interim* of the CPT. The delegation requested the authorities of the Kingdom of the Netherlands to provide the Committee with a response by 1 September 2014 as to the action taken to remedy this issue.

By letter of 24 September 2014 (in Dutch only), the Kingdom of the Netherlands' authorities provided a response to the immediate observation and to other comments raised by the CPT's delegation in its preliminary observations. The response has been taken into account in the relevant sections of the report.

F. National Preventive Mechanism

10. The Netherlands ratified the Optional Protocol to the United Nations Convention against Torture (OPCAT) in September 2010. Since December 2011, four bodies are designated as National Preventive Mechanism, namely the Inspectorate of Security and Justice (also acting as coordinating body); the Health Care Inspectorate; the Inspectorate for Youth Care; and the Council for the Administration of Criminal Justice and Protection of Juveniles.

However, at present, ratification only applies to the Kingdom in Europe, which means that the Caribbean part of the Kingdom is currently not bound by this Protocol and the Dutch NPM does not have a mandate to visit places of deprivation of liberty on these six islands.

The CPT would like to be informed whether consideration is being given to extending the territorial application of OPCAT to the BES islands as well as to Aruba, Curaçao and Sint Maarten.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

BONAIRE

A. Police

1. Preliminary remarks

11. Persons who have been apprehended by the police and ordered into custody (*inverzekeringstelling*) are legally under the responsibility of the Police Corps Caribbean Netherlands (KPCN). In March 2011, however, the cell blocks at both Kralendijk[2] and Rincon Police Stations, the only two police stations with detention capacity, were taken out of service and police custody was moved completely to the premises of Dutch Caribbean Correctional Institution (hereafter "JICN"[3]), with JICN taking full responsibility for the care of the detained persons. Consequently, the delegation did not visit any police stations.

12. Arrested persons are held in Block H (*Arrestantenzorg*), which is separated from other blocks of JICN. Further questioning by police officials can take place either at JICN or at a police station. When an arrested person is transferred for questioning, the responsibility for his/her care lies with the accompanying police officials.[4] Both the KPCN and JICN fall under the responsibility of the Dutch Ministry of Security and Justice.

13. The relevant legislation regulating deprivation of liberty by the police has remained largely unchanged since the previous visit in 2007, despite the constitutional reform in October 2010. Most of the legislation has been renamed, replacing 'Netherlands Antilles' with 'BES' (which stands for Bonaire, Sint Eustatius and Saba). The Code of Criminal Procedure BES (CCP BES) currently in force on the BES islands, therefore, is still almost identical to the old Netherlands Antilles Code of 1996.[5] A draft Criminal Procedure Code was presented to the respective Ministers of Justice of Aruba, Curaçao, Sint Maarten and the Netherlands in November 2013 and is expected to be submitted to the respective parliaments in 2015. Once adopted, this Code should apply on all islands of the Caribbean part of the Kingdom of the Netherlands.

---

[2] The cell block at Kralendijk had been qualified as appalling in the report on the visit in 2007. See 2007 (CPT/Inf (2008) 2 (Part 2), paragraphs 7 and 21.

[3] *Justitiële Inrichting Caribisch Nederland*.

[4] Paragraph 5.8 of the Handbook Detainees Care.

[5] The Code of Criminal Procedure (CCP) *Wetboek van Strafvordering* (P.B. 1996, no. 164) entered into force in November 1996.

In brief, persons suspected of having committed a criminal offence may be held by the police for questioning for a maximum of six hours.[6] Thereafter, if the needs of the investigation so require, the person may be placed in police custody for a maximum period of two days (*inverzekeringstelling*), on the decision of a prosecutor or of an assistant prosecutor[7] reporting to the prosecutor in writing or orally as soon as possible and within 24 hours.[8] Police custody may be further extended by the prosecutor for an additional maximum period of eight days.[9] However, the suspect must be brought before the investigating judge as soon as possible - and within 24 hours - after the beginning of such an extension in order to decide on its lawfulness.[10] Thus the legal maximum period before a person deprived of their liberty is brought before a judge amounts to three days and 16 hours.

Thereafter, a person may be placed in remand detention (*voorlopige hechtenis*) as regulated in Title VIII of the CCP BES. A maximum of eight days of custody (*bewaring*) may be ordered by the investigating judge, renewable once.[11] This detention, however, as well as any further remand custody (*gevangenhouding en gevangenneming*),[12] should take place at a remand facility under the responsibility of the head of that facility; that is, the JICN.[13]

Arrested persons can spend a maximum of ten days in the police custody block before being released or transferred to another block. Juveniles and young adults are generally transferred to a dedicated block upon admission.

14. The delegation did not receive any allegations of ill-treatment by police officers on Bonaire at the time of arrest or during the subsequent interview process and detention. Equally, there were no allegations of ill-treatment by prison staff of persons detained at the police custody block at JICN. Most persons interviewed stated that they had been treated well both by police and prison officers.

2. Safeguards against ill-treatment

15. The CPT attaches particular importance to three fundamental safeguards for persons deprived of their liberty by the police: the right of those concerned to inform a close relative or another person of their choice of their situation; the right of access to a lawyer; and the right of access to a doctor. These three rights represent fundamental safeguards against the ill-treatment of persons deprived of their liberty, which should apply from the very outset of the deprivation of liberty. In addition, it is important that all detained persons are informed of their rights in a language they understand.

---

6 Article 80(1) CCP BES. This article also provides that persons may not be questioned between 10pm and 8am. Therefore this initial period may in fact last up to 16 hours.
7 In Dutch, a *hulpofficier van justitie*, who can also be a senior police officer.
8 Article 83 CCP BES, paragraphs 1 and 4, and Article 87(1).
9 Article 87(2) CCP BES.
10 Article 89(1) CCP BES.
11 Articles 92(1) and 93 CCP BES.
12 See Articles 95 to 99 of the CCP BES.
13 Articles 94(2) and 99 CCP BES.

16. Article 82 CCP states that a person who has been arrested shall be promptly informed of the reasons for his/her arrest, the right to an attorney, and the right to remain silent. Persons interviewed confirmed that they had been informed promptly of these rights, and also of the right to see a doctor and of the right to notify a relative of their detention. They were provided with a written document (available in Dutch, Papiamentu, English and Spanish) stating these rights.

17. According to Article 42(1) of the Police Code of Conduct BES[14] a police officer shall immediately inform a relative or household member of the detained person's arrest. If the detained person is a minor the police shall do this on their own initiative. However, if the detained person is an adult, notification shall be made only upon request. If circumstances prevent the police from doing so when a detainee is not a resident of Bonaire, the consulate of the country of which he/she is a resident should be notified of the arrest.[15]

Most persons interviewed indicated that their right to inform a close relative or another person of their choice of their arrest had been respected. Notification was usually performed by the police and feedback was provided to the detained persons.

18. Arrested persons have a right to consult a lawyer before the first interview by police. However, most persons interviewed by the delegation stated that they had not met with their lawyer until their first appearance before the judge, i.e. after some two or three days. Suspects were asked to sign a waiver when they chose not to consult a lawyer before the start of the police interview.

The CPT recommends that the Dutch authorities ensure that all persons arrested have the right of access to a lawyer from the very outset of their deprivation of liberty, including during any police interview. Such a right should include access to an ex officio lawyer if required.

19. The delegation interviewed a number of prisoners from the islands of Saba and Sint Eustatius, who informed the delegation that there were no lawyers based on these small islands.[16] If arrested persons wished to speak to a lawyer, they usually did so by phone or videoconference with lawyers from Sint Maarten or Bonaire. However, as compensation for travel for lawyers is very limited, arrested persons rarely saw a lawyer before they were transferred to Bonaire.

---

14 *Ambtsinstructie politie BES* (Official Bulletin of the Netherlands Antilles 2001, no. 73), (hereinafter Police Code of Conduct).

15 Article 42(2) of the Police Code of Conduct BES.

16 Sint Eustatius has a population of around 3,600, while Saba has a population of around 1,800.

The delegation was also informed that suspects could be detained by the police for a maximum period of eighteen days in police cell blocks on Sint Eustatius and Saba before being transferred to the JICN on Bonaire. This raises a number of questions. Given the fact that there is no permanent court presence on the islands, there may be difficulties in ensuring that a suspect is brought physically before a judge within the maximum of three days and 16 hours, as well as at the end of the first extension of custody, namely after ten days of 'inverzekeringstelling'. The judicial control of the treatment of persons in custody on police premises, however, is an important safeguard against ill-treatment. Therefore, such persons should be physically brought before a judge at regular intervals, preferably of four days at most. Also, Article 94(2) CCP BES prescribes that 'bewaring', which is the additional custody following the first ten days, should take place at a remand facility under the responsibility of the head of that facility, and therefore not at a police station. Finally, the CPT was informed that plans are in place to build a small prison on Sint Eustatius. This will bring additional complications regarding access to a lawyer and judicial control of treatment of persons in custody.

The CPT wishes to receive the observations of the Dutch authorities on the above-mentioned issues as well as confirmation that arrested persons are indeed brought before a judge as required by the CCP BES. The Committee recommends that the safeguards against ill-treatment be reinforced in the light of the above remarks.

20. Detainees in Block H have access to the medical services of JICN. The delegation did not receive any complaints regarding access to a doctor by detainees during police custody.

21. Custody registers were kept in an adequate manner. The delegation noted that the administration at Block H was satisfactory, as it was in the rest of the prison.

3. Conditions of detention

22. The police custody block at JICN (Block H) consisted of twelve cells, two of which were used as isolation cells for the prison population; access to natural light was adequate and ventilation sufficient. Each of the cells was equipped with a bed, a table, a chair and a semi-partitioned toilet; however, they measured a mere 6 m². The cell for suspected body-packers was equipped with CCTV and an adapted toilet. Detainees had access to the shower block twice a day and outdoor exercise was offered twice a day for 30 minutes.

The CPT considers that a cell size of 6 m² could be considered acceptable for single occupancy for short periods, on condition that detained persons are able to spend a reasonable part of the day outside the cell.

The CPT recommends that detained persons be offered additional time outside their cell, particularly when they are held in Block H for more than two days.

23. A number of persons complained that the prosecutor had imposed additional restrictions during their police custody, such as no phone calls or visits, for periods of ten days, with no specific reasons being provided. While an appeals procedure was in place, it appeared that this was not used much by detained persons.

The CPT trusts that restrictions imposed in the interest of the investigation are kept to a minimum and assessments of the need for such restrictions are made on a case to case basis.

B. Dutch Caribbean Correctional Institution - JICN

1. Preliminary remarks

24. JICN, Location Bonaire, has progressively been transformed since 2008 from a remand prison to an establishment accommodating persons in police custody and remand and sentenced prisoners.

Following the CPT's report on the 2007 visit and in preparation for the transfer of responsibility for the prison to the Dutch authorities, the Dutch agency responsible for custodial institutions (or "DJI"[17]) developed an action plan for the improvement of the prison. The official capacity was doubled in 2008 to 52, expanded further to 76 in 2010 and then again in 2012 with the addition of pre-fabricated container cells. At the time of the visit, the prison had an official capacity of 112 and was holding 77 persons, of whom 24 were in remand custody and two were women.

However, the current premises remain a temporary solution, as a new facility is being built on a different location with an intended capacity of 140 places (remand, sentenced, juvenile and female prisoners). This new facility is planned to be operational in 2015.

25. The CPT welcomes the efforts of Dutch authorities to improve conditions of detention. However, it notes that the current prison population rate is already high (equivalent to approximately 460 per 100,000) and the envisaged capacity of the new facility, if fully used, would lead to a rate of imprisonment for Bonaire, Sint Eustatius and Saba ranking among the highest in the world.

For its part, the CPT is far from convinced that providing additional accommodation will offer a lasting solution to overcrowding.[18] Expanding prison capacity carries the risk of prison populations rising in tandem with the increased capacity. The Committee considers that it would be far preferable for a strategy for the sustainable reduction of the prison population to be put in place, which ensures that imprisonment is in practice the measure of last resort at all stages of the criminal justice system, from pre-trial to the execution of sentences. In the light of experience in certain other jurisdictions, consideration might also be given to avoiding sending persons to prison for short periods. Instead, such sentences could be served in the community.

The CPT recommends that the Dutch authorities adopt and implement a coherent strategy designed to combat high imprisonment rates, taking due account of the relevant Council of Europe recommendations in this area, such as Recommendation R (99) 22 concerning prison population inflation; Rec (2000) 22 of 29 November 2000 on improving the implementation of the European rules on community sanctions and measures; Rec (2003) 22 on conditional release (parole); Rec (2006) 13 on the use of remand in custody; and Recommendation CM/Rec (2010)1 on the Council of Europe Probation Rules.

The CPT wishes to be informed when the new facility becomes operational and to receive information on the numbers and categories of prisoners held.

---

[17] *Dienst Justitiële Inrichtingen*.

[18] While JICN was not full at the time of the visit, it had often been full in the past.

26. At the outset, the CPT would like to state that it found JICN, Location Bonaire, to be very well-managed and providing a safe and constructive environment for its prisoners. Positive examples included the introduction of a mentorship programme (see also paragraph 32) and the communication of management with the committee of detainees (*gedetineerdencommissie/ GeDeCo*).

27. As in 2007, the delegation heard no allegations of ill-treatment by staff at JICN. On the contrary, the relations between prisoners and staff appeared to be good, and the atmosphere was generally respectful.

2. Conditions of detention

a. material conditions

28. JICN is made up of an old building and a new part. The new part consisted mainly of offices and container-cells. Each cell was equipped with one set of bunk beds, a table, two chairs, a cupboard, two fans and a television, with adequate access to natural light and sufficient ventilation. The in-cell toilet, shower and sink were semi-partitioned. However, there was no air-conditioning and in certain blocks no effective protection from the sun; on days with less wind, temperatures could reportedly rise up to 50 degrees Celsius in certain cells.

The CPT recommends that the Dutch authorities take steps to mitigate the extremely high temperatures inside the containers.

29. The old building contained cells of different sizes, while all had little access to natural light and only limited ventilation; the cells were warm, dark and dusty and did not provide good conditions of detention. The CPT delegation was informed that the new facility, which is planned to become operational in 2015, should provide much better conditions of detention for all prisoners.

The CPT trusts that the material conditions in the new facility will be in line with CPT standards.

b. regime

30. Prisoners had access to the gym two or more times a week. JICN has a library, but the offer of books was very limited. All prisoners had access on their landings to a kitchen where they could prepare their own food and to a washing machine and dryer.

In the new part, prisoners could move about freely for much of the day in the outdoor space around the cell blocks or inside in the recreation rooms. In addition, they had access to the outdoor exercise yard where they could play a range of ball games.

In the old building, prisoners also had access to the outdoor exercise yard for two hours per day, with some additional time for group sports. Otherwise, they remained inside in the recreation room or corridors on their landing.

31. Purposeful activities are of crucial importance for the well-being of any prisoner. As regards more specifically sentenced prisoners, such activities are essential to render meaningful a term of imprisonment, help their rehabilitation and prepare them for life in the community.

The delegation heard several complaints from prisoners about limited possibilities for work and education. At the time of the visit, work was available for approximately 50% of the prisoners, but most of these jobs were of a very simple nature and provided no further qualifications to assist reintegration following prison release.[19]

Opportunities for (professional) education were scarce. It was clear that efforts had been made to develop the curriculum over the years. Several courses were offered on subjects such as welding, music, drawing, aggression management training, and hair, skin and nail care. However, the range of activities, the number of places available and the frequency of the courses remained limited.[20] Currently, there is no basic education for adults, although plans are in place.

The CPT recommends that the Dutch authorities pursue their efforts to offer purposeful activities to all prisoners.

c. juveniles

32. One of the cardinal principles enshrined in the United Nations Convention on the Rights of the Child[21] and in the European Rules for juvenile offenders[22] is that juveniles should only be deprived of their liberty as a last resort and for the shortest possible period of time and that in all action concerning them, their best interests shall be a primary consideration.[23] The CPT's basic position is that those juveniles who do have to be deprived of their liberty should be held in facilities specially designed for persons of this age, offering regimes tailored to their needs and staffed by persons trained in dealing with young persons.

While the Netherlands, Aruba, Curaçao and Sint Maarten have all changed their Criminal Codes to include placement in a juvenile institution (*plaatsing in een inrichting voor jeugdigen/PIJ*) as a measure for juveniles, this measure does not yet exist in law on Bonaire. Juveniles sentenced to incarceration are held at the special youth wing (Block G) of JICN, for prisoners up to the age of 24 (young adults or *JoVo*). At the time of the visit, *JoVo* had a capacity of 18 and was holding seven prisoners under the age of 24.

---

19 There are 12 places in the prison workshop where prisoners are trained in welding, painting and carpentry. An additional 10 positions are available in a project with the foundation Krusada. This cooperation was in the process of being expanded at the time of the visit. Other work includes cleaning, ice and water delivery and simple repairs.

20 In the second half of 2013, three women participated in two separate courses on nail styling and hair and skin care. Eight prisoners completed a music course; 11 prisoners participated in arts class; and 14 prisoners learnt how to build kites.

21 Articles 3 and 37.b of the United Nations Convention on the Rights of the Child.

22 Rules 5 and 10 of the European Rules for juvenile offenders subject to sanctions or measures (Recommendation CM/Rec(2008)11).

23 See General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Article 3, paragraph 1) by the Committee on the Rights of the Child. See also the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules"), the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("Havana Rules") and the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency ("Riyadh Guidelines").

Prisoners in *JoVo* are generally above the age of 18, but minors may also be held in this block. *JoVo* was physically separated from other blocks, while sharing the exercise yard with Block F, dedicated to prisoners in need of special care (*Zorg*). Prison officers working in Blocks G and F had gone through additional training on how to engage with young prisoners. Young adults interviewed by the CPT stressed that they were well treated by prison staff and a positive and friendly atmosphere was observed by the delegation.

Each individual was assigned a mentor from among the prison officers. In the case of juveniles and young adults from Saba or Sint Eustatius, the mentor could travel with them on the trip back home, to assist in the transition. The mentorship programme, which was also in place for adult prisoners, appeared to be functioning well and contributed to positive relations between prisoners and prison staff.

33. Juveniles and young adults staying at *JoVo* were allowed to stay outside their cells during the day, except during lunchtime from 12 a.m. to 1 p.m. They had access to the space in front of the cells, the exercise yard, and a recreation room with some games, a kitchen, a washing machine and a dryer. Visits of up to one hour were allowed on a daily basis, with one extended special visit a month. Prisoners from Sint Eustatius and Saba were provided with a $15 phone card at the end of each month to facilitate contact with their families.[24] Facilities for video calls exist, but these were not much used.

The CPT noted that every person held at *JoVo* had his own sentence plan drawn up, based upon conversations during the admission process and observation during their first four to six weeks in prison. The head of the unit informed the delegation that she had weekly meetings with the unit staff, the psychologist, the social worker and the medical service, discussing each individual juvenile. Juveniles attended compulsory education in the mornings. An educational programme, the so-called 'Social Opportunity Project for the Young' (*Sociaal Kanstraject / SKJ*), was in place with a duration of 9 months. The programme included subjects such as mathematics, languages, social skills, computer skills and general development.

Young adults who already had their basic qualifications were allowed to work instead.

Other activities included classes for welding, music lessons and sports. More recently, a project had been introduced on how to train and take care of puppies.

The Committee welcomes the steps that have been taken for juveniles and young adults held in JoVo. Nevertheless, the number of activities and educational programmes, particularly in the afternoons, should be further enhanced.

The CPT recommends that the regime for juveniles and young adults be further developed in order to provide a full programme of activities, including education, personal and social development, vocational training, rehabilitation and preparation for release.

---

[24] This applied to all prisoners from Saba and Sint Eustatius.

34. The CPT acknowledges the difficulty in making adequate arrangements for the detention of a small number of juveniles as is the case in Bonaire. Nevertheless, the CPT considers that it is far preferable for juveniles to be held in specially designed detention centres, and that they should not be kept together with adults.

The CPT recommends that the Dutch authorities take the necessary steps to ensure juveniles are not held together with adults and that every effort be made to accommodate them in specific juvenile facilities. As long as juveniles are held in *JoVo*, they should not have to share a cell with young adults. Further, the Dutch authorities should take the necessary legislative measures to introduce the requirement for juveniles on Bonaire to be placed in special juvenile institutions.

d. women

35. The section for women prisoners within JICN was in the old building and consisted of a 12 m² cell with two sets of bunk beds, cupboards, a toilet, a sink and a shower, and a well-equipped recreation room (table, chairs, sofa, kitchen with several appliances, washing machine and dryer). The cell and recreation room were freshly painted and clean and, according to the two female prisoners, new furniture and kitchen equipment had arrived a few days prior to the CPT's visit. In spite of these measures, the cell remained dark and poorly ventilated.

In principle, the cell is too small to hold more than three persons, given the CPT standard of a minimum of 4 m² per person of living space in multi-occupancy cells. However, the CPT noted that the women were generally able to spend a large part of the day outside the cell. The Director explained that they were aware that the cell space was insufficient, but that under the circumstances it was their best solution. **Improved accommodation should be available in the new facility.**

36. Activities offered to female prisoners included classes for handicrafts, nail styling, skin care and art. Courses took place a few times a year, but often female inmates had nothing to do and remained in either in their cell or in the recreation room the whole day, apart from the outdoor exercise and gym. The women were offered cleaning jobs for a few hours a day.

Women deprived of their liberty should enjoy access to meaningful activities (work, training, education, sport, etc.). The female prisoners at JICN should not only be offered activities which have been deemed "appropriate" for them (such as handicrafts and hair styling), whilst male prisoners are offered training of a more vocational nature. In the view of the CPT, such a discriminatory approach can only serve to reinforce outmoded stereotypes of the social role of women.

The CPT recommends that women be offered additional schooling and relevant work opportunities in order to prepare them for their release.

3. Health-care services

37. At the time of the visit, the JICN medical service had three full-time nurses. An external general practitioner and a psychologist visited once a week and a psychiatrist once a month, and they were all on call for urgent matters. Agreements were in place with laboratory technicians, a physiotherapist, an optometrist and a dietician who visited the prison when necessary. Other specialist care could be obtained at the hospital.

All guards and prison officers were trained as emergency response officers (*bedrijfshulpverleners* or BHV), which included training on first aid, cardiopulmonary resuscitation (CPR) and the use of an automated external defibrillator (AED).

The CPT noted that the medical service was well organised and provided a good quality of care. Other positive findings were that the medical service was not involved in disciplinary procedures and basic health care was provided free of charge to all prisoners.

38. Medical screening of newly arrived prisoners took place systematically within 24 hours of arrival by a nurse reporting to the doctor. The screening included an interview and physical examination, but no specific screening for infectious diseases and ill-treatment.

The CPT recommends that systematic screening for infectious diseases and ill-treatment be introduced.

39. Clear protocols and procedures were in place for a number of situations, including persons at risk of suicide, suspected body-packers and the monitoring and treatment of persons who were diabetic. There was, however, no policy on how to proceed in situations of forced medication. During the visit, the delegation met a prisoner with a severe mental disorder who had received forced medication by injection in April 2014 at JICN. He apparently needed neuroleptic medication but had refused to consent to this treatment for several days. Because his psychiatric condition was worsening, the psychiatrist decided on the forced administration of zuclopenthixol and biperiden. A nurse from the health-care service of JICN injected the substances following the immobilisation of the prisoner, which required the assistance of several prison officers.

The CPT acknowledges that these situations are very difficult to handle and pragmatic approaches need to be developed, especially in small facilities situated far from specialised and better-equipped institutions. Nevertheless, the CPT recalls that forced treatment should never be carried out in a prison where continuous medical surveillance cannot be guaranteed.

The CPT recommends that an adequately equipped room in the public hospital in Bonaire be made available, where such treatment and follow-up may be provided.

Moreover, the Committee recommends that steps be taken to ensure that prisoners suffering from a serious mental disorder are not held in ordinary prisons but in specialised psychiatric institutions.

Furthermore, the CPT recalls that, if forced treatment is deemed necessary, it should be surrounded by appropriate safeguards and based on clear procedures.

40. The CPT has consistently stressed that prison health-care services can make a significant contribution to the prevention of ill-treatment of detained persons through, inter alia, the systematic recording of injuries, whether vis-à-vis new arrivals or following a violent episode in prison. At JICN, no guidelines or procedures exist for the systematic identification of ill-treatment.

The CPT recommends that measures be taken to ensure that the record drawn up after the medical examination of a prisoner – whether newly arrived or following a violent incident in prison – contains:

> **(i) an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment);**
> **(ii) a full account of objective medical findings based on a thorough examination;**
> **(iii) the doctor's observations in the light of i) and ii) indicating the consistency between any allegations made and the objective medical findings.**

Recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with "body charts" for marking traumatic injuries that will be kept in the medical file of the prisoner. If any photographs are made, they should be filed in the medical record of the inmate concerned. In addition, documents should be compiled systematically in a special trauma register where all types of injuries should be recorded.

The results of every examination, including the above-mentioned statements and the doctor's opinions/observations, should be made available to the prisoner and, with the consent of the prisoner, to his or her lawyer. Further, the existing procedures be reviewed in order to ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the report is immediately brought to the attention of the relevant prosecutor regardless of the wishes of the person concerned.

41. As regards medical confidentiality, the CPT's delegation found that it was partially respected. It appeared that medical examinations generally took place out of the hearing and sight of custodial staff and that medical documentation was only accessible to health-care staff. However, prisoners requesting medical care had to submit a request form to a prison officer who passed it on to the medical service. Prisoners were obliged to indicate a reason for requesting medical care. However, no envelopes were provided, which meant that the prisoner's medical confidentiality was not guaranteed.

The CPT recommends that appropriate steps be taken to ensure that prisoners are able to have access to the prison's health-care service on a confidential basis, not exposing medical information to non-medical staff.

4. Other issues

a. prison staff

42. The CPT wishes to emphasise the great importance it attaches to the proper recruitment and training of prison staff.

In 2007, JICN (then Bonaire Remand Prison) had a total of 16 staff members (including the Director), working in shifts of up to 5 persons. In 2010 and 2012, JICN held large-scale recruitment operations and, at the time of the visit, JICN had a total of 105 staff members, mostly locally recruited. The Director reported that a sufficient budget was guaranteed for staffing needs.
A training and education policy for staff[25] (in line with the requirements established in the European part of the Netherlands) was in place. This is a welcome development and the professionalism of staff was reflected in the relations with prisoners as observed by the delegation.

b. contact with the outside world

43. Prisoners at JICN have the right to receive visitors for up to 60 minutes every two weeks, with a maximum of 45 minutes per week and only one visit per week. Juveniles and young adults can receive visitors daily for a maximum of 45 minutes.[26] Extra visits can be requested on the occasion of a prisoner's birthday, the partner's birthday or a visit by a family member who lives abroad.[27]

The visiting room (35 m²) was freshly painted, adequately lit and had a comfortable temperature. The room was under constant CCTV surveillance. There were seven booths in a row, with a glass separation up to face level, which restricted physical contact.

Two smaller visiting rooms were available for meetings with lawyers and for special personal visits, on the occasion of the birth of a prisoner's child, a seriously ill family member, or the departure of a close family member abroad for a long period of time. These rooms consisted of a table with two chairs and no CCTV surveillance.[28]

The CPT recalls that the policy of applying the same visiting restrictions indiscriminately to all prisoners is not appropriate; any restrictions must be based on an individual assessment of the risk which prisoners may present. Visits around a table should therefore be the rule and visits with partitions the exception.

The CPT recommends that prisoners be granted a minimum of one visit of one hour per week. It further recommends that all prisoners be able to receive visits from their family members without physical separation, except in individual cases where there may be a clear security concern.

---

25 *Meerjarig opleidingsbeleid JICN*, 20 December 2013.
26 Article 3.7.1 of the JICN House Rules.
27 Article 3.7.16 of the JICN House Rules.
28 Article 3.7.16 of the JICN House Rules.

44. Prisoners have a right to make phone calls at least once a week for ten minutes, which seems unduly restrictive.[29]

The CPT recommends that prisoners be granted regular and frequent access to the telephone.

c. discipline

45. The disciplinary procedures are clearly explained in the JICN House Rules, listing the sanctions of solitary confinement (maximum two weeks), restrictions on receiving visitors (maximum four weeks), a warning, restrictions on leave days and a fine. Review of the disciplinary measures showed that warnings are rarely used, while the most common disciplinary measure is solitary confinement in one's own cell or in the disciplinary cell. Application of this measure did not appear to be excessive.

JICN has four cells that can be used for solitary confinement, two in the old building and two in the police custody block. The cells provide acceptable conditions of detention and two periods of half an hour of outdoor exercise are offered each day. Medical staff visit persons in these cells on a daily basis.

The CPT recommends that steps be taken to ensure that disciplinary punishment of prisoners does not include a total prohibition of family contacts[30] and that any restrictions on family contacts as a form of punishment should be used only where the offence relates to such contacts.

d. complaints and inspection procedures

46. Prisoners can complain to the Prison Supervisory Committee, which consists of seven members. Each month, two members are appointed 'commissioner of the month', and are tasked with regular inspection visits to the facility and handling incoming complaints. Review of the total cases in 2013 showed that around 12% (13 out of 106) of the complaints were considered justified.

The procedure was generally clear and decisions were taken within a reasonable time-frame.

47. The Law Enforcement Council (*Raad voor de Rechtshandhaving*) is an inter-country body of Curaçao, St. Maarten and the Netherlands. The Council is charged with the general inspection of the effectiveness and quality of several agencies and institutions of the judicial systems of Curacao, Sint Maarten and Bonaire, Sint Eustatius and Saba. The Council also monitors the effectiveness and quality of judicial cooperation between Curacao, Sint Maarten and the Netherlands, in so far as the BES-Islands are concerned. It has a mandate to perform inspections but given the wide range of responsibilities and limited resources it does not perform regular visits to all places where persons may be deprived of their liberty. An inspection of JICN was carried out in August 2013, and the report was presented to the Ministry of Security and Justice in February 2014.

---

[29] Article 3.8.1 of the JICN House Rules.

[30] See also Rule 60(4) of the European Prison Rules.

The Law Enforcement Council cooperates with the Dutch Inspectorate for Security and Justice and makes use of its assessment framework. The Inspectorate, however, plays no role in the actual inspections. It is recalled that OPCAT has not been extended to the BES-Islands and that the Dutch NPM has no mandate to inspect these islands (see paragraph 10).

The CPT would like to receive comments from the Dutch authorities on how it plans to ensure independent inspections of places of deprivation of liberty in these BES-Islands are carried out on a regular basis.

ARUBA

A. Police

1. Preliminary remarks

48. At the time of the 2014 visit, the 1996 Code of Criminal Procedure of Aruba (CCP) remained in force. The rules for detaining persons under this Code were described in detail in the report on the CPT's visit in 2007.[31]

In brief, persons suspected of having committed a criminal offence may be held by the police for questioning for a maximum of six hours.[32] Thereafter, if the needs of the investigation so require, the person may be placed in police custody for a maximum period of two days (*inverzekeringstelling*), on the decision of a prosecutor or of an assistant prosecutor[33] reporting to the prosecutor in writing or orally as soon as possible and within 24 hours.[34] Police custody may be further extended by the prosecutor for an additional maximum period of eight days.[35] However, the suspect must be brought before the investigating judge as soon as possible - and within 24 hours - after the beginning of such an extension in order to decide on its lawfulness.[36] Thus the legal maximum period before a person deprived of his/her liberty is brought before a judge amounts to three days and 16 hours.

Thereafter, a person may be placed in remand detention (*voorlopige hechtenis*) as regulated in Title VIII of the CCP. A maximum of eight days of custody (*bewaring*) may be ordered by the investigating judge, renewable once.[37] This detention, however, as well as any further remand custody (*gevangenhouding en gevangenneming*),[38] should take place at a remand facility under the responsibility of the head of that facility; that is, at the Correctional Institute of Aruba (KIA).[39]

The CPT considers that a person should be kept in police custody for the shortest amount of time possible, preferably less than 24 hours. **To this end, it recommends that the Aruban authorities amend the draft CCP accordingly.**

---

31 See CPT/Inf (2008) 2, Part 2, paragraphs 8 and 9.
32 Article 80(1) CCP. This article also provides that persons may not be questioned between 10 p.m. and 8 a.m. Therefore this initial period may in fact last up to 16 hours.
33 In Dutch, a *hulpofficier van justitie*, who can also be a senior police officer.
34 Article 83 CCP, paragraphs 1 and 4, and Article 87(1).
35 Article 87(2) CCP.
36 Article 89(1) CCP.
37 See Articles 92(1) and 93 CCP.
38 See Articles 95 to 99 CCP.
39 See Articles 94(4) and 99 CCP.

2. Ill-treatment

49. The vast majority of the persons met by the CPT's delegation stated that they had been treated correctly by the police when they had been apprehended. However, a few young persons interviewed at KIA alleged that they had been kicked and slapped by police officers after they had been handcuffed and were lying prone on the ground.

The CPT recommends that the Aruban authorities remind police officers, through training and instructions, that they should use no more force than is strictly necessary when carrying out an arrest. Moreover, there can be no justification for striking an apprehended person after he or she has been brought under control.

3. Safeguards against ill-treatment

a. introduction

50. The CPT attaches particular importance to the right of persons deprived of their liberty to inform a close relative or another person of their choice of their situation; the right of access to a lawyer; and the right of access to a doctor. These rights should apply from the very outset of the person's deprivation of liberty, i.e. as from the moment when the person is obliged to remain with the police. Persons should also be adequately informed of the possibility to avail themselves of these rights, and it should be possible to verify the application of these safeguards by consulting police custody records.

51. The CPT has commented positively in the past on the existence of two general legal provisions which govern the enjoyment of rights by persons deprived of their liberty by the police, notably Article I.5-5 of the Aruban Constitution and Article 90 of the CCP.[40] However, it had been critical of Police Order (*Korpsorder*) No 10/2004 on Arrested Persons which served as the police's main reference text as regards the exercise by detainees of their fundamental rights. Therefore, the Committee is pleased to note that a revised Police Order on Detainees entered into force on 1 May 2009, replacing the previous Police Order 10/2004. The new Police Order was designed to comply with the recommendations made by the CPT in its report on the 2007 visit.

b. notification of custody

52. Although no right to notify a third party of one's detention is explicitly provided for in the CCP, the new Police Order on Detainees does provide for the right of every detained person to inform a family member or a third person of their choice as soon as possible of their arrest. The notification of detention is made by the duty officer, by telephone or in person, after which the information is recorded in the detainee database (date, time, person notified).

[40] See CPT/Inf (2008) 2, Part 2, paragraph 25.

The right of notification may be restricted only if it is in the interests of the investigation and only for a short time. Any decision to restrict the right to notification must be taken by an assistant public prosecutor (i.e. a senior police officer) or the duty public prosecutor in consultation with the person leading the investigation, and the reasons must be noted in the electronic custody record. However, Article 90 of the CCP does not provide for any time limit for the restriction on the right of notification.

The CPT recommends that the restriction of this right should be time-limited.

53. In contrast to the findings at the time of the 2007 visit, most persons interviewed in the course of the 2014 visit either at a police station or in KIA stated that they had been able to inform a third person of their detention. This is a positive development. Nevertheless, a number of persons, notably foreign nationals, alleged that they had not been able to inform a third person of their detention.

The CPT recommends that every effort be made to ensure that all detained persons are able to inform a third person of their situation as from the outset of their deprivation of liberty.

c. access to a lawyer

54. As the CPT has stated in the past, its objective of guaranteeing an effective right of access to a lawyer during police custody is not primarily linked to issues of due process or the right to a fair trial; it is aimed at preventing ill-treatment. In the CPT's experience, it is during the period immediately following the deprivation of liberty that the risk of intimidation and ill-treatment is at its greatest.

It follows that to be effective as a safeguard against ill-treatment, access to a lawyer must be guaranteed as from the very outset of deprivation of liberty. The right of access to a lawyer must include the right to talk to him/her in private; the detained person should also, in principle, be entitled to have the lawyer present during any interview with law enforcement officials.

55. The Aruban CCP provides that every suspect who is brought to a place for questioning must, immediately thereafter, and in any case before any questioning begins, be informed of his right to be assisted by a lawyer and, if he cannot afford a lawyer, of his right, if he is placed in custody (*inverzekeringstelling*), to have one provided to him free of charge.[41]

[41] See Article 82(1c) CCP.

The CCP also provides that the lawyer has the right to unhindered access to his or her client, including consultations in private and confidential correspondence.[42] However, no right is granted for a lawyer to be present at his or her client's interview by the police and information gathered by the CPT's delegation showed that lawyers tended to be contacted only after the first police interview. This practice would appear to contradict the report submitted by the Aruban authorities to the UN Committee against Torture in 2012, in which it was stated that "a lawyer may be consulted even before the first police interview as a result of the *Salduz* judgment" of the European Court of Human Rights of 27 November 2008.

Further, in the course of the 2014 visit, the CPT's delegation received a number of complaints from persons it interviewed that they had not been provided with prompt access to a lawyer.

The CPT recommends that the Aruban authorities ensure that all persons arrested have the right of access to a lawyer from the very outset of their deprivation of liberty, including during any police interview. Such a right should include access to an ex officio lawyer if required.

56. In case of serious suspicion that the course of justice might be hindered, access to a lawyer may be restricted or denied by the prosecutor for a maximum period of eight days.[43] The CPT continues to have serious reservations about this provision. The CPT fully recognises that it may exceptionally be necessary to delay for a certain period a detained person's access to a lawyer of his/her choice. However, this should not result in the right of access to a lawyer being totally denied during the period in question. In such cases, access to another independent lawyer who can be trusted not to jeopardise the legitimate interests of the investigation should be organised. It is perfectly feasible to make satisfactory arrangements in advance for this type of situation, in consultation with the local Bar Association.

The CPT recommends that the Aruban authorities amend the legislation accordingly in order to provide for right of access to another lawyer whenever access to a specific lawyer is restricted or denied in the interests of justice.

d. access to a doctor

57. According to Chapter 6, paragraph 4, of the 2009 Police Order on Detainees, every arrested person has a right to access to medical care. Every request for medical care should immediately be forwarded by the shift commander to the judicial doctor or nurse on duty and should be recorded in the arrested person's file (*arrestantenmodule*). A detained person may also request, at his/her expense, to be seen by a doctor of his/her own choice. Further, the Police Order guarantees the medical confidentiality of any consultation and of the medical record; only the medication prescribed is being noted in the detainee's file and the distribution of this medication is the responsibility of the shift commander.

---

42 See Article 70(1) CCP.

43 See Article 70(2) CCP.

In the course of the 2014 visit, the CPT's delegation noted the situation regarding access to a doctor has improved since the 2007 visit. A team of two police general practitioners, a forensic doctor and a nurse visited the police stations on a rota basis and, outside of working hours, were on permanent call. However, at San Nicolas Police Station it appeared that there had been no visits by a doctor for many months. Some detained persons met by the delegation complained that they had not been able to see a doctor while being held at this police station.

The CPT recommends that police officers be reminded that every request to see a doctor should be promptly dealt with in accordance with the Police Order on Detainees. Further, the police medical team should visit all police stations in which persons may be detained on a regular basis.

e. information on rights and custody records

58. A standard notification form, available in Dutch, Papiamento, English, and Spanish, was in use at the police establishments visited. The form had been updated since the 2007 visit and now included the right of a detained person to have a third person informed of his/her detention and the right of access to a doctor, in addition to the right to remain silent, the right to legal counsel and the right to have a lawyer assigned free of charge in the event of custody (*inverzekeringstelling*). The form requires the signature of the arresting officer and the arrested person. In the event that the arrested person refuses to sign, the refusal is also noted on the form.

It appeared that the form was being systematically used and detained persons stated that they had been informed of their rights.

59. In the police stations visited, the CPT's delegation noted that the electronic custody records introduced in 2009 were both comprehensive and well kept, with the relevant information inserted.

f. investigations into complaints of police ill-treatment

60. The CPT considers that the diligent examination by the competent authorities of all complaints of ill-treatment by police officers brought before them and, where evidence of wrongdoing emerges, the imposition of appropriate disciplinary and/or criminal penalties, will have a very strong deterrent effect. For this reason, the persons responsible for overseeing and carrying out investigations into possible ill-treatment by law enforcement officials should be independent of those implicated in the events. Further, such investigations should offer guarantees of effectiveness, promptness, expeditiousness and transparency.

As was the case in 2007, two bodies were competent to carry out investigations into misbehaviour by members of the Police Corps of Aruba (KPA): the *Landsrecherche* and the *Bureau Interne Zaken en Onderzoeken* (the KPA Internal Affairs and Investigations Bureau or 'BIZO'). Both could carry out investigations into criminal offences, and the BIZO could also conduct disciplinary investigations.

The CPT would like to receive information on the number of investigations, prosecutions and sanctions imposed on law enforcement officials relating to cases of ill-treatment of detained persons for the period 2010 to 2014. Further, it understands that the Police Complaints Committee will be reconstituted and would like to receive information on its composition and mandate as well as on its institutional arrangements, (i.e. independence and to whom it reports).

4. Conditions of detention

61. The CPT considers it necessary to recall that police establishments should meet certain elementary material requirements.

All police holding facilities should be clean, of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, such facilities should enjoy natural light. Further, holding facilities should be equipped with a means of rest (e.g. a fixed chair or bench) and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets.

Persons in custody should be allowed to comply with the needs of nature in clean and decent conditions, and be offered adequate washing facilities. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day. Persons held for 24 hours or more should be provided with appropriate personal hygiene items and be offered outdoor exercise every day.

62. In the course of the 2014 visit, the CPT's delegation visited the police stations of Noord, Santa Cruz and San Nicolas. The police station with the largest detention area, Oranjestad, was temporarily closed at the time of the visit due to the building of a tramline. Nevertheless, prior to its closure the CPT had received reports[44] that the material conditions in the detention area continued to be poor despite some renovation work having been carried out in 2010.

The CPT would like to be informed when the detention cells in Oranjestad Police Station are brought back into service. Further, it would like to receive details of the conditions of detention (*inter alia* access to natural light and ventilation, the functioning of the sanitary facilities and hygiene, and access to outdoor exercise).

63. The conditions of detention at *Noord Police Station* had hardly improved since the 2007 visit.[45] The cells had no access to natural light and limited ventilation, and the artificial neon lighting in the corridor outside the cells was poor. Worn and dirty mattresses and paper-like sheets (when in stock) were provided at night, and drinking water was provided sporadically by staff during the day; the water in the cells was switched on at 6 a.m. and 8 p.m. for a few minutes to enable detained persons to wash. The intercom system did not function in any of the cells. Access to outdoor exercise was offered for at least one hour every day except Saturdays (due to a lack of staff). Otherwise, detained persons were confined to their 5 m² cells for periods of up to 10 days with nothing to do. At the time of the visit, 11 persons were being held at the police station, many of whom were being held for the full 10 days.

---

44 See for example the January 2013 monitoring report on the implementation of CPT recommendations in Aruba – *op.cit* 1.

45 See CPT/Inf (2008) 2, Part 2, paragraph 19.

The detention facility at *Santa Cruz Police Station*, built in 2005, consisted of two corridors each with six cells; it had been freshly painted and was in a good state of repair. Each cell contained a concrete plinth and measured 7 m², including the partitioned toilet and shower (the water was switched on for 30 minutes twice a day). However, access to natural light was very limited and ventilation was extremely poor; at the time of the visit (7 p.m.), the temperature in the cells was 31°Celsius. Further, the mattresses in the two occupied cells were worn and thin.

The CPT recommends that the Aruban authorities take the necessary steps to improve the conditions of detention at Noord and Santa Cruz Police Stations, notably as regards access to natural light and ventilation; mattresses should be cleaned and sheets systematically provided. Further, all detained persons held for 24 hours or more should be offered access to outdoor exercise every day.

64. At the outset of the visit, the CPT had been informed that the detention facility at *San Nicolas Police Station* was only being used to hold persons for a few hours. When the CPT's delegation visited the facility the police officer on duty stated that detained persons were never held for more than one night in the station. This was plainly incorrect as the delegation met a number of persons who had been held in the detention facility at San Nicolas for extensive periods.[46] The conditions in the seven-bed cell for women (measuring some 28 m²) and the 12 single-occupancy cells (each measuring 7 m²) were not acceptable; they had limited access to natural light, inadequate ventilation and artificial lighting and were in a poor state of repair. Two of the single-occupancy cells were used for cases of alcohol/drug withdrawal and possessed solid doors which meant that the air was even more stagnant and that access to natural light was non-existent. Above all, there was a rank, fetid smell emanating from the cells as the toilets did not flush properly. Detained persons who spent several days in these cells stated that when the toilets were flushed from outside the cell, the water would instead rise up over the toilet bowl and flood the floor with faeces and urine. Moreover, detained persons were frequently not provided with any outdoor exercise.

These conditions are clearly not suitable for holding detained persons. And yet, the CPT's delegation met a 15 year-old boy who had been detained from 26 April to 6 May 2014 in this police station. For the first four days of his detention, he was not provided with a mattress, blanket or any hygiene products;[47] nor was he offered any access to outdoor exercise. He was effectively kept in solitary confinement for ten days with no support. Such treatment could be considered as inhuman and degrading.

The CPT recommends that the Aruban authorities take out of service the detention cells at San Nicolas Police Station until such time as they have been fully refurbished and the sewage problems resolved properly. Under no circumstances should a detained person be held overnight at this police station.

Further, whenever it is considered necessary to deprive a juvenile of his/her liberty, he or she must be held in an appropriate place of detention commensurate with their needs and provided with care and support by properly trained child specialists. Juveniles should not be held in police stations overnight.

---

[46] For example, SR was held from 1 to 9 May and WL from 2 to 9 May 2014.

[47] They were provided by his mother after four days.

65. As regards persons held in a police station who are deemed to be at risk of suicide, an appropriate care protocol should be applied. Where possible, the person should be placed in a cell which has no ligature points and provided with rip-proof clothing. Further, the person should be placed under constant personal observation and provided with the opportunity to talk to a health-care professional. It is totally inappropriate to place a detained person at risk of suicide naked in a cell with no support; the CPT's delegation met a man who was kept naked for 10 days in a cell at Santa Cruz Police Station because he was deemed to be at risk of suicide. In the CPT's view, such treatment could be considered as degrading and should be ended.

The CPT recommends that the Aruban authorities draw up a care protocol for all detained persons who are deemed to be at risk of suicide while in police custody, taking into account the above remarks.

66. The CPT has consistently raised the issue of lengthy detention in police premises in its visit reports dating back to 1994.[48] In its report on the 2007 visit, the CPT revisited this matter, criticising the fact that it was standard practice to hold detained persons, including minors, on police premises for 10 days, irrespective of the complexity of the case, with no requirement to justify, in each individual case, the need for longer placement in police custody.[49] At the time of the 2014 visit, the situation had not changed and detained persons continued to be routinely held for up to 10 days in police cells. The CPT therefore reiterates its view that remand custody on police premises in itself poses a series of risks of ill-treatment. Consequently, instead of being kept for longer than two days and 16 hours in police stations, persons remanded in custody should be promptly transferred to prison; such an approach does not preclude the police from carrying out further questioning, if necessary, of persons remanded in prison.

Moreover, the conditions of detention in the police stations visited are only suitable for holding detained persons for short periods, and certainly not longer than 64 hours.

The CPT calls upon the Aruban authorities to review the system of remand detention on police premises with a view to substantially reducing its duration, in light of the above remarks.

---

[48] See CPT/Inf (96) 27, paragraphs 187 to 190.
[49] See CPT/Inf (2008) 2, Part 2, paragraph 14.

B. Centro Dakota Immigration Detention Facility

67. In the course of the 2014 visit, the delegation carried out a targeted visit to the Centro Dakota immigration detention facility. Foreign nationals held under aliens legislation have been detained at this facility since February 2013. Immigration detention on Aruba falls under the responsibility of the Aruban Police Force and is run by its Department for Supervision of Foreigners.[50] At the time of the visit, four foreign nationals were being held at the facility; three men and one woman.

The majority of persons who have been ordered to leave or who are awaiting a decision on their appeal to an expulsion order are placed under an obligation to report to the police at regular intervals. Detention, however, still occurs frequently. In the first four months of 2014, a total of 78 persons had been detained at Centro Dakota; 55 men and 23 women. The great majority of persons spent one to three days, while the maximum varied between 15 and 18 days. One person, however, had been detained for 57 days.

68. At the time of the visit, immigration detention was regulated in the National Ordinance on Admission, Expulsion and Departure of 1993. According to Article 19(1) of this Ordinance, foreign nationals may be removed from Aruba if they entered the country illegally or overstayed the duration of their visa or permit. Article 19(2) provides that such a person may be detained if the Minister of Justice considers him or her to be a danger to public order and safety or good morals, or if there is a well-founded fear the person will attempt to evade expulsion. Article 19(3) stipulates that such a decision must be reasoned and provided in writing to the person concerned.

However, there were no specific regulations governing the detention of irregular migrants. While a right to appeal expulsion and detention orders is not provided in law, a right to appeal such a decision within six weeks is incorporated into the written orders. Immigrants who are being detained are free to consult a lawyer, but there are no legal aid provisions guaranteeing a right to a lawyer if one cannot be afforded.

The CPT's delegation was informed that amendments to the National Ordinance were being drawn up which would introduce a 90-day maximum period of detention and included judicial review of detention orders within 72 hours. A right to legal aid and a right to appeal appear not to be envisioned in these amendments.

The delegation was also provided with a draft national decree regulating the regime of immigration detention, as well as with draft house rules based on the proposed decree. The delegation observed that the facility generally functioned in line with these documents, although they had not yet been formally adopted.

The CPT recommends that the Aruban authorities move forward urgently with developing and adopting appropriate regulations for the detention of irregular migrants. Such regulations should include the right to legal assistance, provided free of charge for persons without sufficient means, and the right of appeal.

---

50 This function was placed under the Aruban Police Force on 1 March 2012, changing the name from *Guarda Nos Costa* (border guards) into *Afdeling Vreemdelingentoezicht*.

69. The CPT's delegation heard no allegations of ill-treatment by the supervisory staff of Centro Dakota and the atmosphere at the facility was relaxed.

70. The staff of centres for immigration detainees have a particularly onerous task. Firstly, there will inevitably be communication difficulties caused by language barriers. Secondly, many detained persons will find the fact that they have been deprived of their liberty when they are not suspected of any criminal offence difficult to accept. Thirdly, there is a risk of tension between detainees of different nationalities or ethnic groups. Consequently, the CPT places a premium upon the supervisory staff in such centres being carefully selected and receiving appropriate training. Staff should possess both well-developed qualities in the field of interpersonal communication and cultural sensitivity, given the diverse backgrounds of the detainees. Further, at least some of them should have relevant language skills. Further, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons and to take appropriate action.

While staff at Centro Dakota generally acted in a supportive manner, they had not received specific training to deal with the particular needs of foreign nationals detained under aliens legislation and played a merely supervisory role.

The CPT recommends that staff be selected and trained for the specific purpose of working with irregular migrants.[51]

71. Following the renovations that took place early 2014, the material conditions can generally be considered adequate. The one storey building consisted of 16 single-occupancy cells[52] measuring around 9 m², equipped with a regular bed with a proper mattress and a semi-partitioned sanitary annex; access to natural light was sufficient and ventilation and artificial lighting adequate. There were no call-bells.

72. No purposeful activities were offered. Detainees had access to a common recreation room (65 m²), which was equipped with tables and chairs, a television, cards and board games, for most of the day . Access to outdoor exercise was offered twice a day for one hour, in a long and narrow space adjoining the building which provided no shelter from the sun or rain; the uneven gravel surface, combined with the layout of the yard meant that detainees could not undertake any sports activities.

For short stays, which is the case for the vast majority of persons held at Centro Dakota, the regime could be considered as acceptable. However, in respect of persons who have to stay for more than a few days, additional measures need to be taken to offer some purposeful activities (educational, recreational or vocational).

The CPT recommends that the exercise yard be improved in the light of above remarks. The CPT further recommends that the Aruban authorities develop a range of purposeful activities for detained persons at Centro Dakota. The longer the period for which persons are detained, the more developed should be the activities which are offered to them.

---

51 See also the report on the 2007 visit (CPT/Inf (2008) 2), Part 3, paragraph 34).

52 One of these cells was generally only used as a storage room.

73. The persons interviewed indicated that they had not undergone any medical screening upon admission. When a detainee is in need of medical care, he or she is first visited by the police nurse. If necessary a doctor can be called in, or the detainee is transferred to the hospital.

The CPT recommends that systematic medical screening of all immigration detainees, including for transmissible diseases, be introduced. Such screening should be carried out in a way that respects medical confidentiality.

74. The arrangements for allowing foreign nationals contact with the outside world were generally adequate. They were allowed to receive visitors on a daily basis and were allowed to make and receive phone calls throughout the day. However, the draft House Rules provided that the maximum duration of visits will be 15 minutes; the CPT does not see any justification for such a time-limit and would propose that visits be one hour or longer in duration.

The CPT recommends that this provision in the draft House Rules be amended accordingly.

75. As for information in a language detainees understand, the delegation noted that most staff members could communicate in Spanish (the language of the majority of immigration detainees in Aruba). However, communication problems can arise when other languages are needed. The delegation found that the draft House Rules had been translated into English and Spanish, but legal documents pertaining to individual detainees, such as their detention and deportation orders, are only available in Dutch. Staff made an effort to orally translate and explain these documents, but persons interviewed by the delegation indicated that they had refused to sign them, as they were not able to read them themselves.

The CPT recommends that all immigration detainees be expressly informed of their rights and the procedures applicable to them in a language they can understand. All immigration detainees should be systematically provided with a document setting out this information; the document should be available in the languages most commonly spoken by those concerned and, if necessary, the services of an interpreter should be made available. Further, all official documents that immigration detainees are required to sign should be provided in a language they can understand.

C. Aruba Correctional Institution (KIA)

1. Preliminary remarks

76. The *Korrektie Instituut Aruba* (or ‘KIA’) remains the only prison in Aruba, situated in an isolated location to the south-east of the island, and has been operational since 1990. At the time of the visit, it was accommodating 212 prisoners for an official capacity of 310 places.

The prison consisted of seven distinct units. The vast majority of prisoners (165) were held in the remand (*Huis van Bewaring or HvB*) and sentenced (*Straf*) sections of the prison, each of which consisted of four wings leading off a central gallery. Female prisoners and young persons were held in distinct units separated from the rest of the prison population. In addition, there were units for specific categories of prisoner: a high-security unit (*Extra Beveiligde Afdeling or EBA*), a protection unit (*Hechtenis*) and a unit for prisoners with mental health problems (*Individuele Begeleidingsafdeling or IBA*).

2. Ill-treatment

77. The great majority of the prisoners met by the CPT’s delegation stated that they had no problems with the prison staff. However, a few allegations of deliberate ill-treatment of inmates by prison officers were received. One prisoner, who regularly had verbal altercations with prison staff, stated that he had been punched by a prison officer while returning from a visit with his hands handcuffed behind his back. Another prisoner alleged that in March 2014 a group of police officers had come to his cell, handcuffed and blind-folded him and delivered punches and kicks to his body and head. Apparently the injuries were noted and photographed by a doctor and the case is currently being investigated by the *Landsrecherche*.

A number of prisoners also alleged that they had been verbally abused by prison officers, notably those accommodated in wing A1.

The CPT recommends that the Aruban authorities deliver the clear message to prison officers that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of sanctions. Further, the Committee would like to be informed of the outcome of the investigation by the *Landsrecherche* into the above-mentioned case.

78. Many prisoners told the CPT’s delegation that they did not feel safe in KIA and several allegations of inter-prisoner violence and intimidation were received. In particular, inmates stated that prison officers were either not aware or insufficiently attentive to the possibility of prisoners from one wing being able to mix with prisoners from another wing when the gates leading on to the central gallery in either the remand (*HvB*) or sentenced (*Straf*) sections were opened. Moreover, a few inmates alleged that staff were slow to intervene when a fight among inmates broke out and in some areas such as the gym in *Straf* there was no prison officer on duty to supervise the inmates.

Addressing the phenomenon of inter-prisoner violence and intimidation requires that prison staff be alert to signs of trouble and both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of dynamic security and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. It is also obvious that an effective strategy to tackle inter-prisoner intimidation/violence should seek to ensure that prison staff are placed in a position to exercise their authority in an appropriate manner. Consequently, the level of staffing must be sufficient (including at night-time) to enable prison officers to supervise adequately the activities of prisoners and support each other effectively in the exercise of their tasks. Both initial and ongoing training programmes for staff of all grades must address the issue of managing inter-prisoner violence.

In addition, a key component in the management of inter-prisoner relations is the careful assessment, classification and cell allocation of individual prisoners within the prison population.

The CPT reiterates its recommendation that the prison management of KIA develop a strategy to address the challenge of inter-prisoner violence, taking into account the above remarks.

3. Conditions of detention

a. material conditions

79. At the time of the 2014 visit, the material conditions in much of the prison were in an advanced state of dilapidation. This was particularly the case in the *HvB* and *Straf* sections, where lumps of concrete and plaster were falling off the ceilings and the walls were being eroded by the wind, sand and salt. The state of decay was evident in all the cells visited and in many parts of the buildings the iron support rods were exposed. A piece of plaster had recently fallen on an inmate walking up the steps to the central gallery of the sentenced section, highlighting the dangerous nature of the situation. The delegation also noted flooding in many cells, either with leaking toilets or water running down the walls of the cells, which represents a safety, and even a health, hazard (inmates and staff slipping on the floors and mosquitoes breeding).

The cells in the *HvB* and *Straf* sections measured approximately 9.5 m^2 and were equipped with a triple bunk bed plus mattress and blankets, chairs, table and cupboard. The sanitary annexes contained a combined WC/shower unit and a washbasin, and were partially partitioned from the rest of the cell. Access to natural light was good. However, the artificial lighting in many cells did not work which meant that from 6 p.m. until dawn it was dark. Further, many cells were very dusty as there was no means of preventing sand being blown into the cells.

As the CPT has stated in the past, the size of the cells were entirely satisfactory for accommodating one person and could, on an exceptional basis, be considered acceptable for two (subject to the qualification that the sanitary annexe should be fully partitioned). However, they provided a very confined living space for three prisoners which was the situation found in many cells.

The CPT recommends that the Aruban authorities take the necessary steps to redress the state of decay and dilapidation in the prison, including preventing further flooding. Further, the number of inmates accommodated in each cell should not exceed two. In addition, measures should be taken to provide artificial lighting in every cell and to fully partition the sanitary annexe in each cell.

b. regime

80. The CPT recalls that the aim should be to ensure that all prisoners, including those on remand, spend a reasonable part of the day (i.e. eight hours or more) outside their cells, engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association. A regime which provides for varied activities, as part of an individualised sentence plan, is essential for the welfare of prisoners during their incarceration as well as being a vital component in the preparation for release.

At the time of the 2014 visit, the CPT's delegation found that the amount of purposeful activities available was totally insufficient. Prisoners spent most of their days in idleness and there was a genuine frustration at the lack of opportunities for work, vocational programmes, sports and recreation. Certain initiatives that had been started, such as music classes, suddenly stopped. Education was virtually non-existent and those few committed prisoners who studied on their own for exams were informed at the last moment without any clear explanation that they could not sit the exams.

The CPT reiterates its recommendation that activities for prisoners be developed, with a view to ensuring that all prisoners (including those on remand) can spend a reasonable part of the day (i.e. 8 hours or more) outside their cells engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association.

c. juveniles

81. The dedicated juvenile unit contained twelve cells (each measuring some 12 m² including a partially partitioned sanitary annexe) on two levels, opposite which was a control room where staff were stationed. A separate recreation room for drawing and handicraft classes adjoined the cell block area but appeared to be under-utilised. The front of each cell had floor-to-ceiling bars, thus affording little privacy. At the time of the visit, there were 21 juveniles and young adults in the unit ranging from 15 to 21 years of age. All the cells possessed a triple bunk bed and were satisfactorily equipped. However, the layout of the cage-like cells was not conducive to developing a supportive environment to assist their educational development and the enhancement of their social skills.

The CPT recommends that the Aruban authorities take the necessary steps to create an environment more appropriate for accommodating juveniles deprived of their liberty. Further, no more than two juveniles should be accommodated in each cell and juveniles should not have to share a cell with young adults.

82. As regards the regime, the juveniles were offered one and a half hours of outdoor exercise every day and one and a half hours outside the cell in the hall area in front of the cells where they could use the fitness equipment. Complaints were heard from many of the young persons about the lack of activities on offer, notably the lack of education and vocational activities. Although the regime was complicated by the fact that there were three distinct groups of young persons in the unit who had to be kept separated due to outside rivalries, there were nevertheless far too few opportunities for young inmates to engage in purposeful activities.

The CPT recommends that the Aruban authorities ensure that all juveniles held at KIA (whether on remand or sentenced) are provided with a full programme of vocational, educational, sports and recreational activities.

83. One of the cardinal principles enshrined in the United Nations Convention on the Rights of the Child[53] and in the European Rules for juvenile offenders[54] is that juveniles should only be deprived of their liberty as a last resort and for the shortest possible period of time and that in all action concerning them, their best interests shall be a primary consideration.[55]

At the time of the visit, the CPT's delegation met a 15-year-old boy in the unit. The boy was kept apart from the other young prisoners by being placed in a separate cell and conducting his outdoor exercise alone. Nevertheless, he associated with the older youths on the wing and was not offered any specific activities.

In the CPT's view, KIA was not a suitable place to accommodate a 15-year-old-boy and consideration should be given to providing a more child-centred environment for juveniles who must be deprived of their liberty. To this end, the CPT recommends that the authorities of Aruba develop a strategy for addressing the specific needs of juveniles deprived of their liberty. Moreover, the new Criminal Code provides for sentenced juveniles to be placed in a youth institution (*Plaatsing in een inrichting voor jeugdigen*). As long as juveniles are kept in KIA, additional efforts must be made to provide them with a full range of purposeful activities and socio-educative support.

d. women prisoners

84. The layout of the female unit was the same as that of the juvenile unit and was accommodating 10 women at the time of the visit. All the cells were clean, freshly painted and suitably equipped. However, the sanitary annexes were not fully partitioned and the toilets in several of the cells did not flush. Further, there were no call-bells and prisoners claimed that staff sometimes left the unit unattended. **These deficiencies should be remedied.**

---

53 Articles 3 and 37.b of the United Nations Convention on the Rights of the Child.

54 Rules 5 and 10 of the European Rules for juvenile offenders subject to sanctions or measures (Recommendation CM/Rec(2008)11).

55 See General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Article 3, paragraph 1) by the Committee on the Rights of the Child. See also the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules"), the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("Havana Rules") and the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency ("Riyadh Guidelines").

As regards the regime, female prisoners were offered an hour and fifteen minutes of outdoor exercise each day, and spent most of the day associating in the hall area in front of the cells where they could use the fitness equipment, and have access to a kitchen. However, the prisoners complained about the lack of purposeful activities (vocational and educational), and that most of the scheduled activities in the daily programme had been stopped. They also complained about the lack of psychological support and inadequate preparation for release.

The CPT recommends that the Aruban authorities take the necessary steps to offer women prisoners a full range of purposeful activities, in line with the scheduled programme. Further, they should be offered the necessary support in preparation for their release.

e. Vulnerable persons' unit (IBA)

85. The CPT wishes to highlight in particular the poor conditions in the IBA section where prisoners with mental health problems and other vulnerable prisoners were accommodated. The nine cells were dilapidated, dirty and had very little access to natural light. Moreover, the prisoners in this section should be provided with care appropriate to their condition; instead, they were left to idle away their days with little to do and minimal psychiatric/psychological input. For example, a prisoner diagnosed with schizophrenia, who had already spent six years in the prison and had another seven years to serve, spent his time cleaning and watching television and had no sentence or treatment plan to assist him in coping with prison and preparing for life in the community. Such treatment is not conducive to the well-being of these prisoners.

The CPT recommends that immediate steps be taken to improve the situation in the IBA, in the light of the above remarks, or that the IBA prisoners be transferred to alternative accommodation where their specific needs can be better met.

4. Prison staff

86. The situation regarding the number of prison officers working at KIA has not improved since the 2007 visit. At the time of the 2014 visit, there were 99 prison officers of whom 16 had recently completed their initial training, for an official complement of 111 officers. The staffing roster required 53 officers for each period of 24 hours, with 31 officers present between 10 a.m. and 3 p.m. and 11 officers on duty from 11 p.m. to 7 a.m. However, levels of absenteeism remained high at 45 days per year per staff member in 2013 (a reduction from 56 in 2012) which further fuelled the levels of stress and the excessive overtime. It was not unusual for officers regularly to work 16-hour shifts. This state of affairs increases the high levels of stress and exacerbates the tension inherent in any prison environment; the layout of the accommodation blocks did not facilitate matters. Further, the low staffing complement has a negative influence on the quality and level of the activities programme. Not surprisingly, the delegation observed that little was done to promote positive relations between staff and prisoners.

It is essential that the excessive amount of overtime worked by some staff is reduced and that the rates of absenteeism among staff are tackled. This will require *inter alia* recruiting more staff and addressing staff management issues, such as ensuring that the promotion system is more meritocratic. The delegation met some very committed staff of different ranks who would like to see the prison evolve, and putting in place a staff development programme would contribute to the professionalisation of staff and assist towards creating the possibility of a rehabilitative regime in prison.

Professionalisation of staff should see the role of a prison officer evolving from that of essentially a "turn-key" with no responsibility other than that of static security. Instead, prison officers should be encouraged to extend their role into interacting positively with inmates, taking part in rehabilitation programmes and being an integral element in a multi-disciplinary approach towards prisoners' welfare. This would not only provide a far more challenging and interesting job for the prison officers but it would also address the rehabilitation aspect of prison which has to date been moribund. Of course, this would necessitate introducing far more training for those prison officers capable and willing to take up this additional role.

The CPT recommends that the Aruban authorities take the necessary measures to increase the number of prison officers employed as well as to develop the capacity and role of prison officers, in the light of the above remarks. In parallel, the amounts of overtime should be reduced and the levels of, and reasons for, absenteeism tackled.

87. More generally, it is important that prison officers be provided with regular in-service training courses to improve their skills and knowledge, and also refresher courses. For example, some officers told the delegation that they had not had refresher firearms training for seven years; if true, these officers should not be permitted to carry firearms, for example when carrying out escort duties.

The CPT recommends that all prison officers be offered in-service training and that regular compulsory refresher courses be organised for core requirements of a prison officer's job.

88. In December 2013, prison officers staged a walk-out without providing any prior notice following months of disgruntlement over prison staff management. Taking advantage of the lack of prison officers present, some inmates of the *HvB* section rioted while others had to escape from their smoke-filled cells; order was only restored after the police intervened.

Although strikes are not common, it is essential that every step be taken to ensure that prisoners' rights are upheld and that their physical and psychological integrity is guaranteed whenever there is a strike by prison staff. In particular, prisoners should be offered at least one hour of outdoor exercise, access to medical care, regular meals and access to a shower as well as continued contacts with the outside world (especially visits, including by a lawyer). To this end, a binding agreement should be drawn up to ensure that there are sufficient staffing levels in the prison during a strike action to assure such a minimum service.

The Committee recommends that the Aruban authorities establish a protocol for a guaranteed minimum service for inmates, applicable whenever there is a strike by prison staff, taking into account the above remarks.

5. Health-care services

89. The CPT recalls that the task of prison health-care services should not be limited to treating sick prisoners. They should also be entrusted with responsibility for social and preventive medicine. In particular, a prison health-care service should ensure that information about transmissible diseases is regularly circulated, to both prisoners and prison staff. Suicide prevention is another matter falling within the purview of a prison's health-care service. Further, it lies with prison health-care services to supervise catering arrangements (quantity, quality, preparation and distribution of food) and conditions of hygiene. Provision of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly.

The findings of the 2014 visit demonstrate that there remain a number of important structural deficiencies in the provision of health care to prisoners.

a. health-care staffing and premises

90. At the time of the visit, there was one full-time general practitioner and three full-time nurses, all of whom were present in the establishment from 8 a.m. to 4.30 p.m. five days a week. Outside of these hours, the doctor and nurses were on call. In addition, there was a full-time psychologist, and a dentist was supposed to start working at the beginning of June 2014. For a prison with a capacity of some 300 inmates, the health-care staffing complement could be increased by an additional one or two nurses, preferably one of whom should be a qualified mental health nurse.

Prisoners in need of psychiatric care would be sent to the psychiatric department at the Aruba General Hospital (or 'PAAZ') in Oranjestad. However, this department was not equipped to accommodate forensic patients who were considered violent or dangerous, which meant that consultations at PAAZ lasted only a few hours. Further, prisoners were often hand and leg cuffed during consultation at PAAZ; such a routine practice should be ended as it undermines the establishment of a proper patient-doctor relationship. Instead, cuffs should only be applied at the express request of the treating doctor. In the absence of a forensic psychiatric department in Aruba and the fact that the KIA has a special unit for prisoners with mental health problems, provision should be made for a psychiatrist to visit KIA one or two days a week. Further, an occupational therapist should also visit the establishment to ensure that prisoners located in the IBA are offered appropriate programmes.

As for access to other medical specialists, there was usually a considerable delay due to the financial constraints placed on KIA. External scheduled appointments were frequently cancelled at the last moment because the establishment did not have the money to pay the specialists, who required payment in cash. Cancelled appointments often resulted in a delay in treatment of up to three months due to rescheduling. It should also be mentioned that laboratory testing was regularly interrupted for up to several weeks at a time due to non-payment.

The CPT recommends that a mental health nurse be recruited at KIA and that provision be made for a psychiatrist and occupational therapist to visit the prison at least one day every week. It would like to be informed whether a dentist is now visiting KIA.

Further, the CPT recommends that the Aruban authorities take the necessary steps to ensure that KIA possesses the appropriate financial resources to pay for specialist medical care that prisoners require and for laboratory testing. In this connection, consideration might be given to developing a closer partnership with the Ministry of Health, with a view to improving quality control and access to health care.

91. Access to health care within the prison was also problematic due to the current "requests" procedures in place in the prison. It appeared that prisoners had to place all requests into a box and certain prison officers were responsible for making a triage of the various requests and deciding on which ones were designated as "health" requests. The health requests were subsequently handed over to the medical service, sometimes weeks after the original request had been filed.

The CPT recommends that the prison authorities review the current requests procedures to ensure that all requests to see a doctor or nurse are directly transmitted to the health-care service without interference by prison staff.

Further, the CPT has reservations about the utility of the prison doctor spending considerable amounts of time drawing up dietary plans for every prisoner. It would be preferable if his time was devoted to clinical care and the organisation of the medical service and, apart from drawing up a general dietary plan, should only exceptionally make a dietary recommendation for those inmates requiring a special dietary menu due to medical needs (such as diabetes).

The CPT recommends that the involvement of the prison doctor in drawing up dietary plans for prisoners be reviewed, in the light of the above remarks.

92. The premises of the health-care unit were insufficient to meet its needs. The consultation rooms were small and poorly ventilated; the inability to open the windows and aerate the rooms after consultations represents a clear health risk. Further, water was leaking through the ceiling into the doctor's consultation room. Moreover, the health-care unit had only one entry and exit, making the building a fire-safety hazard (the windows were all barred and could not be opened), which was a cause of constant concern for the staff.

The CPT recommends that steps be taken to remedy the above-mentioned deficiencies with a view to ensuring that the health-care services are located in premises fit for purpose.

b. medical screening, recording of injuries and confidentiality

93. The CPT is obliged to reiterate the importance of medical screening of newly arrived prisoners, in particular in the interests of identifying special medical needs, preventing the spread of transmissible diseases, suicide prevention and the timely recording of any injuries. Such screening should be carried out as soon as possible and no later than 24 hours after a prisoner's admission to the establishment.

94. Newly admitted prisoners (roughly 23 every week) were usually seen by a nurse within 24 hours of arrival. However, the actual medical assessment carried out was extremely cursory. No physical examination was performed and there was no screening for infectious diseases, mental health problems or addictions. Nor was an anamnesis performed. For example, a prisoner who was sent to hospital from a police station with suspected tuberculosis on 29 April 2014 and a week later admitted to KIA had no information in his medical file, not even a completed intake form at the time of the visit on 20 May 2014.

The CPT recommends that the Aruban authorities take steps to ensure that every newly arrived prisoner be properly interviewed and physically examined by a medical doctor, or a fully qualified nurse reporting to a doctor, during the initial screening. Such screening should always take place within 24 hours of a person's admission to prison, and preferably on the day of arrival at the establishment. Further, each prison health-care service should have in place a screening tool to enable a proper assessment of the health-care needs of each newly admitted prisoner.

95. The CPT has consistently pointed out that prison health-care services can make a significant contribution to the prevention of ill-treatment of detained persons through, *inter alia*, the systematic recording of injuries, whether vis-à-vis new arrivals or following a violent episode in prison. Not only is it necessary for the health-care services at KIA to record injuries observed in sufficient detail but the doctor should note down a full account of the statements made by the person concerned which are relevant to the medical examination. Further, a doctor should indicate as far as possible the consistency between any allegations made and the objective medical findings; this will enable the relevant authorities to properly assess the information set out in the record. Such an approach was not being followed at KIA. Further, it is essential that all such reports are transmitted to the relevant authorities.

The CPT recommends that measures be taken to ensure that the record drawn up after the medical examination of a prisoner – whether newly arrived or following a violent incident in prison – contains:

(i) an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment);
(ii) a full account of objective medical findings based on a thorough examination;
(iii) the doctor's observations in the light of i) and ii) indicating the consistency between any allegations made and the objective medical findings.

Recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with "body charts" for marking traumatic injuries that will be kept in the medical file of the prisoner. If any photographs are made, they should be filed in the medical record of the inmate concerned. In addition, documents should be compiled systematically in a special trauma register where all types of injuries should be recorded.

The results of every examination, including the above-mentioned statements and the doctor's opinions/observations, should be made available to the prisoner and, with the consent of the prisoner, to his or her lawyer. Further, the existing procedures be reviewed in order to ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the report is immediately brought to the attention of the relevant prosecutor regardless of the wishes of the person concerned.

96. As regards medical confidentiality, the CPT's delegation found that it was rarely respected. Medical examinations took place in the presence of custodial staff, who wandered freely around the medical unit and were even present when physical examinations of prisoners were being carried out. Further, there was no confidentiality of medical records; custodial staff had access to the records and some records were left lying about the medical unit in full view of prisoners and custodial staff. There is a need to completely review medical confidentiality at KIA.

The CPT recommends that steps be taken to ensure that medical consultations at KIA guarantee medical confidentiality (i.e. that the medical examination is conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of non-medical staff).

Further, **the CPT recommends that steps be taken to guarantee the confidentiality of medical data within the prison. Health-care staff may inform custodial officers on a need-to-know basis about the state of health of a detained person; however, the information provided should be limited to that necessary to prevent a serious risk for the detained person or other persons, unless the detained person consents to additional information being given.**

97. The delegation also observed that nursing staff prepared medication in weekly dosage boxes which were subsequently distributed by prison officers up to three times a day. Consequently, medication and its dosage are clearly visible to the custodial staff. Such a practice could compromise medical confidentiality requirements and does not contribute to the proper establishment of a doctor-patient relationship. In the CPT's view, medication should be distributed by health-care staff.

The CPT recommends that the authorities draw up a list of medication that should in every case be distributed by health-care staff (such as anti-psychotics, methadone and antiretroviral drugs) and to put in place procedures for the distribution of other medication that guarantees confidentiality. Further, the health-care service should ensure that the drugs chart, showing which prisoner was provided with which medication and when, is properly maintained, and that all missed medication dosages are recorded.

6. Other issues

a. discipline

98. In the course of the 2014 visit, the CPT's delegation had an opportunity to review the disciplinary rules and procedures, and their implementation.

99. The rules require that prisoners who are suspected of having committed a disciplinary offence should be heard by the Director or another senior officer before a decision on their innocence or guilt and punishment is made (see Article 54 (3) of the Prisons Law of 13 December 2005). However, the Committee has noted that the law does not provide for prisoners to call witnesses on their own behalf or to cross-examine witnesses against them. Many prisoners stated that contrary to the provisions of the law (Articles 48 (1) and 54 (3)) they had not been informed in writing of the charges against them or had a formal hearing prior to being placed in a disciplinary cell. Further, they had not received the decision in writing which impeded their possibility to appeal the finding and the punishment.

The CPT recommends that the Aruban authorities amend the 2005 Prisons Law to strengthen the procedural safeguards in place for prisoners suspected of having committed a disciplinary offence, in the light of the above remarks. Further, steps should be taken to ensure that the Prisons Law is fully applied.

100. The CPT's delegation found that the <u>disciplinary sanction of solitary confinement</u> was often imposed for the maximum period of 14 days and, in accordance with Article 55 of the 2005 Prisons Law, could be extended to 30 days in the case of a repeat offence.

The CPT has serious reservations as to the maximum possible periods of disciplinary confinement. Solitary confinement can have an extremely damaging effect on the mental, somatic and social health of those concerned. Therefore, it should only be imposed as a disciplinary sanction in exceptional cases and as a last resort, and for the shortest possible period of time. In the Committee's view, a continuous period of up to 30 days of solitary confinement as a punishment is excessive. The Committee considers that the maximum period of solitary confinement as a punishment should be no more than 14 days for a given offence, and preferably lower.[56] Further, there should be a prohibition on sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of that maximum period. Any offences committed by a prisoner which might call for more severe sanctions should be dealt with through the criminal justice system.

As regards minors, the CPT has very strong reservations as concerns any form of solitary confinement of juveniles as this can compromise their physical and/or mental integrity. To this end, it considers that a juvenile should never be placed in solitary confinement for disciplinary purposes for a period exceeding three days.[57]

---

56 See the 21st General Report on the CPT's activities – CPT/Inf (2011) 28, paragraph 56 (b).

57 See the 18th General Report on the CPT's activities – CPT/Inf (2008) 25, paragraph 26.

Further, the CPT has again noted that solitary confinement was invariably accompanied by the corollary punishment of withdrawal of permission to use the telephone and to receive visits. The Committee has stated clearly that prisoners undergoing a punishment of solitary confinement as a disciplinary sanction should never be totally deprived of contacts with their families and any restrictions on such contacts should be imposed only where the offence relates to such contacts. It should also be remembered that family members have a right to retain contact under Article 8 of the European Convention on Human Rights. In addition, prisoners should be entitled to at least one hour of outdoor exercise per day. Consequently, Article 56 of the 2005 Prisons Law should be amended accordingly.

The CPT recommends that the 2005 Prisons Law of Aruba in relation to disciplinary matters be revised accordingly, taking into account the above remarks.

101. The segregation unit, consisting of five cells, was located next to the section for high-security prisoners. At the time of the visit, one person was being held in segregation for a 10-day disciplinary punishment. The cell (measuring some 12 m² and 6m high) was in a state of dilapidation, dirty, flooded with water, humid and very poorly ventilated. Access to natural light was extremely limited and the artificial lighting was insufficient for reading without straining the eyes; the metal sheeting covering the cell bars prevented light from entering the cell and impeded the little ventilation available in the unit. The toilet did not function and was constantly leaking water into the cell. There were no staff on duty in the unit and no call bell which meant that prisoners had to shout or throw water[58] into the corridor to catch the attention of the staff monitoring the corridor of the unit with CCTV. In sum, the conditions were unfit for holding human beings.

<u>The CPT's delegation made an immediate observation under Article 8, paragraph 5, of the Convention in relation to these cells and requested that, until such time as these cells are provided with sufficient access to natural light and adequate ventilation, they should no longer be used for accommodating prisoners. Further, the cleanliness and hygiene in the disciplinary section must be radically improved.</u>

By letter of 24 September 2014, the Aruban authorities responded that action had been taken to improve the ventilation and hygiene in these cells. Although the renovation of KIA as a whole was a priority for the Ministry of Justice, the financial situation in Aruba meant that there was currently no funding available. Nevertheless, this matter had been raised with the Dutch Ministry of Security and Justice with a view to finding a solution.

The CPT has taken note of this response. **However, it considers that action is still required before these cells are adequate for accommodating prisoners. The CPT recommends that the cells in the segregation unit be provided with sufficient access to natural light and adequate artificial lighting, and the defective toilets repaired. Further, all cells should be equipped with a call-bell.**

---

58 Prisoners were provided with a bucket of water with which to wash and to flush the toilet.

102. The prison doctor was informed each time a prisoner was placed in a segregation cell for longer than 24 hours. However, he played no role in the decision-making process resulting in segregation except where the measure was applied for medical reasons. This is positive. On the other hand, health-care staff should be very attentive to the situation of all prisoners placed under solitary confinement. Not only should they be informed of every such placement but they should visit the prisoner immediately after placement and thereafter on a regular basis, at least once a day, and provide them with prompt medical assistance and treatment as required. They should immediately report to the director whenever a prisoner's health is being put seriously at risk by being held in solitary confinement. This was not occurring at KIA and prisoners held in the segregation unit were not visited by health-care staff every day; the prisoner in solitary confinement at the time of the visit had not been visited at all by health-care staff even though he had felt feverish and had lost a considerable amount of body fluid during the preceding couple of days.

The CPT recommends that steps be taken to bring the practice at KIA into line with the above-mentioned precepts concerning the role of health-care staff in relation to prisoners placed in solitary confinement.

103. As regards the existing arrangements for urine tests at KIA, the CPT considers that urine sample collection and testing for control purposes is essentially a non-medical task that can affect the therapeutic relationship with patients when carried out by health-care staff. For this reason, health-care staff should not be involved in the collection and testing of urine samples for control purposes (i.e. drug abuse). At the same time, staff carrying out urine tests should receive appropriate training, and such tests should be carried out in a completely different place to the premises utilised by prison medical staff.

The CPT recommends that the necessary steps be taken to end the involvement of health-care staff in carrying out urine tests for control purposes, in the light of the above remarks.

b. contact with the outside world

104. The Committee attaches considerable importance to the maintenance of good contact with the outside world for all persons deprived of their liberty. The guiding principle should be to promote contact with the outside world as often as possible; any restrictions on such contacts should be based exclusively on security concerns of an appreciable nature. Above all, prisoners must be given the means of safeguarding their relationships with their families and close friends.[59]

105. According to Article 27 of the 2005 Prisons Law, prisoners are entitled to at least one visit per week of 45 minutes and to a weekly phone call of at least five minutes. In practice, prisoners were usually offered visits of one hour a week which is satisfactory although it would be preferable for the standard of a minimum of one hour of visits a week to be reflected in the law. As for telephone calls, the Committee considers the provision to be too restrictive.

---

[59] See CPT Standards: CPT/Inf/E (2002) 1 - Rev. 2011, page 18, paragraph 51.

In this context, the delegation received a number of complaints from foreign national prisoners about the limited possibilities of contact with their families. The CPT wishes to re-emphasise the need for some flexibility as regards the application of rules on visits vis-à-vis prisoners whose families live far away. Such prisoners should be allowed to accumulate visiting time and be given more opportunities to have telephone contacts with their families.

The CPT recommends that accumulated visiting time for prisoners who receive infrequent visits be put in place and that steps be taken to increase prisoners' access to the telephone. Further, the 2005 Prisons Law should be amended to provide prisoners with at least one hour of visit time each week and increased access to the telephone. Consideration should also be given to exploring the use of communication through Voice over Internet Protocol for foreign national prisoners.

c. complaints and inspection procedures

106. A Prison Supervisory Committee was competent to receive complaints from prisoners at KIA and its members could visit prisoners at any time. However, the Supervisory Committee has not been functioning since December 2013 following the resignation of its Chairman, a judge from the Joint Court of Justice and the Committee's only paid member. Action should be taken to reconstitute the Supervisory Committee as soon as possible and to ensure that it functions effectively to examine prisoners' complaints (i.e. that the members of the Committee are properly trained to fulfil their tasks and fully understand the independent nature of their mandate).

Within the prison, complaints were handled by the Head of Social Services and the Director of the Prison, with most matters resolved through oral communication with prisoners. However, it was not possible to obtain written information on the meetings of the internal prison complaints committee (i.e. the minutes). Further, in one case relating to inter-prisoner violence where prison officers had apparently allowed the gates between two sections to remain open, thus enabling one inmate to attack another inmate, the Head of Social Services had written to the Ministry of Justice and the Prison Director seeking action but had not received a response.

Many prisoners met by the delegation had little confidence in the complaints process and stated that they often did not receive any response. Others did not know about how to make a complaint and there were no specific complaints forms available.

The CPT considers that the existing internal complaints system needs to be reviewed; for example, prisoners ought to be able to make written complaints at any moment and place them in a locked complaints box on a prison landing (forms should be freely available); all written complaints should be registered centrally within the prison before being allocated to a particular service for investigation or follow up. In all cases, the investigation should be carried out expeditiously (with any delays justified) and prisoners should be informed within clearly defined time periods of the action taken to address their concern or of the reasons for considering the complaint not justified. In addition, statistics on the types of complaints made should be kept as an indicator to management of areas of discontent within the prison. Of course, prison officers should be encouraged and empowered as far as possible to resolve complaints themselves and if this is not possible recourse to a written procedure should be promoted.

The CPT recommends that the Aruban authorities review the current system of complaints, taking into account the above remarks. Further, steps should be taken to reconstitute the Supervisory Committee and to ensure that it receives the necessary support in order to function effectively.

107. There was no external inspection body visiting the prison. Following the CPT's 2007 visit, the Netherlands authorities together with the Aruban authorities had instituted a process of regular (yearly) visits by two legal experts to examine to what extent the issues raised in the CPT's report had been addressed. Such a follow-up process is to be welcomed. However, there is a need for a permanent independent body to be charged with undertaking regular visits to KIA to talk with the inmates and to examine the conditions of detention.

The CPT recommends that arrangements be made to put in place a system of regular yearly inspection visits to KIA by an independent body.

D. Psychiatric Department (PAAZ) at Dr Horacio Oduber Hospital

1. Preliminary remarks

108. The PAAZ,[60] located in a separate building on the grounds of Dr Horacio Oduber Hospital, is the only mental health-care institution in Aruba where patients subject to an involuntary placement order may be accommodated. PAAZ consists of four units set out around a large garden courtyard: a nine-bed admission unit, a 10-bed follow-up unit, a 21-bed long-stay unit and a 15-place day-care unit). At the time of the visit, the department was accommodating 32 patients.

The CPT's delegation undertook a targeted visit to the admission unit, the only closed ward of the clinic, which was accommodating seven patients, two of whom were being held on an involuntary basis.

At the outset, the CPT wishes to state that the PAAZ department appeared to be a caring, well-run and supportive, therapeutic establishment. The delegation received no allegations of ill-treatment by staff.

2. Patients' living conditions and treatment

109. The <u>living conditions</u> in the admission unit were of a satisfactory nature, with the four double-occupancy rooms and two single-occupancy rooms, all of an adequate size, suitably furnished, bright and airy. Patients had access to a large sitting and dining room area at one end of the unit where they could relax, watch television, smoke and take their meals. The bathroom and toilet areas were clean and hygienic. Patients had access to a large inner garden area every day for one or two hours, and could also meet their visitors there.

Two isolation rooms were located at the far end of the unit.

110. As for <u>treatment</u>, each patient had an individual care plan drawn up which was reviewed on a weekly basis by a psychiatrist. A broad range of treatment was offered, including pharmacotherapy, individual and group psychotherapy, occupational therapy (art, music), group sessions and a range of activities.

Electro-convulsive therapy (ECT) was not applied but patients could be sent to Curaçao for such treatment if considered necessary.

---

[60] PAAZ stands for *Psychiatrische Afdeling Algemeen Ziekenhuis* (Psychiatric Department of General Hospital).

3. Staff

111. In general, staffing levels at PAAZ were good. There were four psychiatrists working on a part-time basis, 27 full-time nurses, five occupational and assistant therapists and a psychologist was scheduled to start working at the department in September 2014. A coordinator (social worker) and two care managers were responsible for the management of PAAZ. A general practitioner was on-call from the hospital and patients could also attend the hospital for appointments. Three nurses were on duty at the admission unit for each shift.

The CPT would like to receive confirmation that a psychologist now works at PAAZ.

4. Seclusion and means of restraint

112. Recourse to the use of mechanical means of restraint at PAAZ was very infrequent with the last application having been in 2012. If nurses were unable to calm an agitated patient through de-escalation techniques, resort to manual restraint or seclusion was possible. Further, medication for rapid tranquillisation was used. In all cases the resort to means of restraint and seclusion was reported to a doctor. In the case of seclusion, the measure usually lasted less than 24 hours but could be longer (e.g. in May 2013 a patient had spent four days in seclusion) and staff told the delegation that seclusion for periods of several weeks was possible. The measure was reviewed on a daily basis by the psychiatrist and the patient would be visited every two hours by a nurse. At the end of the period of seclusion, a debriefing would take place. For every instance of seclusion or other measure of means of restraint a separate sheet was used to record the measure (the time at which the measure began and ended; the circumstances of the case; the reasons for resorting to the measure; the name of the doctor who ordered or approved it; whether the measure was part of a treatment plan). However, it did not appear that the management of PAAZ were using the available information to obtain an oversight of the extent of the resort to isolation and other means of restraint and to enable measures to be taken, where appropriate, to reduce their incidence.

The CPT would appreciate the comments of the Aruban authorities on this matter.

The Committee would further like to receive confirmation that a measure of seclusion is always ordered by a doctor and that only in emergency situations is the measure applied by nursing staff and the doctor subsequently informed.

Further, the CPT would like to receive a copy of PAAZ's policy on restraint, including on issues associated with restraint such as staff training, complaints policy, reporting mechanisms and debriefing.

5. Safeguards

a. initial placement procedure

113. The procedure by which involuntary placement is decided should offer guarantees of independence and impartiality as well as of objective medical expertise. Leaving aside emergency cases, the formal decision to place a person in a psychiatric hospital should always be based on the opinion of at least one doctor with psychiatric qualifications, and preferably two and the actual placement decision should be taken by a different body from the one that recommended it. Further, a patient must have the right to appeal the measure to a court or mental health tribunal; which should see the patient before deciding on the involuntary placement measure if this is possible and not detrimental to the person's health. The patient should also be entitled to legal assistance in such proceedings. Where the patient does not appear before the judge, he or she should normally be represented by a person acting in his or her interests.

114. The procedure for the involuntary placement of a civil nature in Aruba is regulated by Article 15 of the 1992 National Ordinance on Mental Health[61] which provides for the Minister of Health to authorise an involuntary placement based upon the statement of a psychiatrist. The form the psychiatrist must complete was provided for by Article 8(3) of the 1992 Ordinance and continues to be used despite Article 8 of the Law having been abrogated. The form requires a statement of the symptoms, a diagnosis, the time and date the doctor last saw the patient, how often the patient has been seen by the doctor or another person and any other relevant information. The same form is used for the renewal of an involuntary placement order. In an emergency, a nurse may sign the order but a doctor must then see the patient within 24 hours.

Patients are not allowed to see the form drawn up by the doctor but may write to the Minister of Health to oppose an application, if they are informed that such an application is being made. They may also call a lawyer which does not occur often and in one recent case the lawyer advised the patient against mounting a challenge to the order after seeing for himself that the patient was ill. Further, patients do not receive any written reasons for decisions on involuntary placement unless they request them specifically, and there is no procedure for a hearing to be held. Moreover, there is no legal remedy to challenge the involuntary placement.

The above-mentioned procedures clearly fall short of providing adequate safeguards for patients subject to a measure of involuntary placement. A proper legal framework regulating this matter needs to be adopted.

The CPT recommends that the Aruban authorities review the procedures for involuntary placement at PAAZ in order to meet the standards set out in paragraph 113 above.

---

61 *Krankzinnigenverordening* (AB 1992 no. GT 15) which translates literally as "Lunatic Ordinance".

More particularly, **steps should be taken to ensure that:**

- **involuntary placement orders are always based on the opinion of at least one doctor with psychiatric qualifications, and preferably two; the need for such placements should be reviewed at regular intervals;**
- **a person who is involuntarily placed in a psychiatric establishment by a non-judicial authority must have the right to bring proceedings by which the lawfulness of his detention shall be decided speedily by a court;**
- **the court seeks an opinion from a psychiatrist outside the hospital concerned in the context of involuntary placement decisions or extensions thereof;**
- **patients who are admitted to a psychiatric hospital on an involuntary basis have the effective right to be heard in person by the court during placement or appeal procedures;**
- **the patient concerned receives a copy of any decision on involuntary placement in PAAZ and is informed in writing about the reasons for the decision and the avenues/deadlines for lodging an appeal;**
- **a patient is entitled to legal assistance in the context of involuntary placement decisions;**
- **patients themselves are able to request at reasonable intervals that the necessity for their continued placement be considered by a judicial authority.**

b. safeguards during placement

115. At the PAAZ admission unit, the involuntary admission of a patient was considered to provide the authorisation to administer compulsory treatment.

The CPT has fundamental objections to such an approach. The Committee considers that patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorising treatment without his or her consent. It follows that every patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.

Of course, consent to treatment can only be qualified as free and informed if it is based on full, accurate and comprehensible information about the patient's condition and the treatment proposed. Consequently, all patients should be provided systematically with relevant information about their condition and the treatment which it is proposed to prescribe for them. Relevant information (results, etc.) should also be provided following treatment.

The CPT recommends that the Aruban authorities take the necessary steps to recognise the principle of free and informed consent to treatment, in the light of the above remarks.

116. A leaflet containing basic information on the house rules of the admission unit existed (including *inter alia* information on meals, treatment, visiting times for patients). However, the leaflet did not refer to issues such as consent to treatment, access to legal assistance or how to file complaints. Further it was not systematically provided to patients.

The CPT recommends that the leaflet at the PAAZ admission unit be revised in light of the comments above. Patients unable to understand the information leaflet should receive appropriate assistance.

117. The maintenance of contact with the outside world is essential, not only for the prevention of ill-treatment but also from a therapeutic standpoint. Patients should be able to send and receive correspondence, to have access to the telephone, and to receive visits from their family and friends. Confidential communication with a lawyer should also be guaranteed.

All these requirements seemed to be met. In particular, the CPT's delegation noted that patients had the right to receive visitors every afternoon for one to two hours, and that they were permitted to make two telephone calls a day, including by mobile phone if they possessed one.

118. The possibility for patients to address complaints to independent external monitoring bodies remains a cornerstone of the basic rights of any involuntarily admitted psychiatric patient. However, besides being able to address complaints internally to the PAAZ management and to the hospital complaints department, the delegation was informed that there was no independent monitoring body either visiting PAAZ or dealing with complaints.

The CPT recommends that the Aruban authorities ensure that specific arrangements exist enabling patients to lodge formal complaints with a clearly designated body, and to communicate on a confidential basis with an independent outside authority.

CURAÇAO

A. Police

1. Preliminary remarks

119. Further to the recent constitutional changes, criminal legislation on Curaçao is in a period of transition. A new Criminal Code was adopted in November 2011 and a draft Criminal Procedure Code was presented to the respective Ministers of Justice of Aruba, Curaçao, Sint Maarten and the Netherlands in November 2013 and is expected to be submitted to the respective parliaments in 2015. Once adopted, this Code should apply on all islands of the Caribbean part of the Kingdom of the Netherlands. In the meantime, the old Netherlands Antilles Code of Criminal Procedure (CCP) of 1996 remains in force on Curaçao.[62] The legal framework governing the detention of criminal suspects by the police has therefore basically remained unchanged since the CPT's 2007 visit.

In brief, persons suspected of having committed a criminal offence may be held by the police for questioning for a maximum of six hours.[63] Thereafter, if the needs of the investigation so require, the person may be placed in police custody for a maximum period of two days (*inverzekeringstelling*), on the decision of a prosecutor or of an assistant prosecutor[64] reporting to the prosecutor in writing or orally as soon as possible and within 24 hours.[65] Police custody may be further extended by the prosecutor for a further maximum period of eight days.[66] However, the suspect must be brought before the investigating judge as soon as possible - and within 24 hours - after the beginning of such an extension in order to decide on its lawfulness.[67] Thus the legal maximum period before a person deprived of one's liberty is brought before a judge amounts to three days and 16 hours.

Thereafter, a person may be placed in remand detention (*voorlopige hechtenis*) as regulated in Title VIII of the CCP. A maximum of eight days of custody (*bewaring*) may be ordered by the investigating judge, renewable once.[68] This detention, however, as well as any further remand custody (*gevangenhouding en gevangenneming*),[69] should take place at a remand facility under the responsibility of the head of that facility; that is, the Centre for Detention and Correction Curaçao (*Sentro di Detenshon i Korekshon Kòrsou* or SDKK).[70]

The CPT considers that a person should be kept in police custody for the shortest amount of time possible, preferably less than 24 hours. **To this end, it recommends that the Curaçao authorities amend the draft CCP accordingly.**

---

62 The *Wetboek van Strafvordering* (P.B. 1996, no. 164) entered into force in 1996.
63 Article 80(1) CCP. This article also provides that persons may not be questioned between 10p.m. and 8a.m. Therefore this initial period may in fact last up to 16 hours.
64 In Dutch, a *hulpofficier van justitie*, who can also be a senior police officer.
65 Article 83 CCP, paragraphs 1 and 4, and Article 87(1).
66 Article 87(2) CCP.
67 Article 89(1) CCP.
68 Articles 92(1) and 93 CCP.
69 See Articles 95 to 99 of the CCP.
70 Articles 94(4) and 99 CCP.

120. Detention up to ten days at police stations still occurs in Curaçao. However, the CPT found that the current practice was for persons to be held at police stations for a couple of days at most (often only a few hours) before being transferred to a specific unit for persons still under police custody at the prison, SDKK.

The CPT welcomes the steps taken by the authorities of Curaçao to institute a practice of transferring persons in police custody from police premises to the prison within a few days of apprehension. However, although the detained persons were held in a prison block operated by prison staff, in fact the police continued to exercise full authority over these persons. It appeared that prison staff at Block 1 could not enter the cells without permission from the police, even in the case of a medical emergency.

The CPT recommends that police custody does not exceed the initial period of two days (*inverzekeringstelling*) and that any further extensions of detention are carried out at SDKK. Further, once a detained person has been physically transferred to the prison, full authority over their care should be transferred to prison staff and Block 1 should be formally integrated into the prison structure.

121. Moreover, the delegation found that police stations continue to be used in exceptional circumstances for holding prisoners for extended periods of time, apparently for reasons of protection. A review of the registers showed that a number of persons had been held for three months or more. A former police officer awaiting extradition had spent 120 days at Barber Police Station, while a suspect in a high profile case had spent eight months at Barber before being transferred to SDKK on 12 May 2014. Rio Canario Police Station held another suspect in the same case from 29 October 2013 and following his conviction on 29 August 2014 he continued to be held there.

A new unit for separation and protection of prisoners at SDKK was due to be brought into service in the near future. The delegation was told that this unit should put an end to all forms of long-term detention at police stations.

The CPT would like to be informed whether the new unit at SDKK is now operational and, if so, what regime is in place. Further, it wishes to receive confirmation that long-term detention of prisoners no longer takes place in police stations.

122. The delegation visited the police stations of Barber and Rio Canario, as well as Block 1 of SDKK.[71]

[71] The CPT previously visited Punda Police Station during its visits in 1994 (CPT/Inf (96) 1) and in 2007 (CPT/Inf (2008) 2); however, at the time of the 2014 visit it was no longer used for detaining suspects.

2. Ill-treatment

123. Most persons met by the delegation stated that they had been treated correctly by the police both at the time of their apprehension and during their detention.

However, a number of allegations, including from juveniles, were received of excessive use of force by police officers at the time of apprehension and several persons stated that they had been kicked or punched by officers after they had been handcuffed.

For example, one person, arrested at home in the presence of his family, alleged that after having been pushed to the floor and his wrists cuffed behind his back, a member of the special arrest team had hit him in the neck. Further, he stated that he was kept on the floor for approximately 15 minutes with his eyes covered and that he was blindfolded during his transport to Barber Police Station.

124. The CPT has acknowledged in the past that the apprehension of a suspect may be hazardous, particularly if the individual concerned resists apprehension and/or the law enforcement officials have reason to believe that the person might be armed and dangerous. The circumstances may be such that the apprehended person, and possibly also law enforcement officials, suffer injuries, without this being the result of an intention to inflict ill-treatment. However, no more force than is strictly necessary should be used and, once apprehended persons have been brought under control, there can never be any justification for them being struck. Similarly, resort to physical force should not be the automatic response when a law enforcement official is confronted by a person who contests his authority.

The CPT recommends that police officers be regularly reminded, through training and instructions, that no more force than is strictly necessary should be used when effecting an apprehension. Senior police officers should remind their subordinates that ill-treatment is not acceptable and will be punished accordingly. This message should be recalled in an appropriate form at suitable intervals.

125. Furthermore, the CPT has strong objections to law enforcement officials blindfolding or hooding apprehended persons. In the Committee’s experience, the purpose of such a practice is most often to prevent such persons from being able to identify law enforcement officials who inflict ill-treatment upon them. Even in cases when no physical ill-treatment occurs, to blindfold a person in custody - and in particular someone undergoing questioning or being transported from one place to another - is a form of oppressive conduct, the effect of which on the person concerned will frequently amount to psychological ill-treatment.

The CPT recommends that the Curaçao authorities expressly prohibit the blindfolding of persons who are in the custody of police.

126. Several efforts to address ill-treatment by police officials have been undertaken since the previous CPT visit, including the issuing of guidelines on the investigation of complaints against the police[72] and the introduction of a training course for police officers on use of force, arrest and self-defence skills and use of firearms. These measures have contributed to a decrease in the number of allegations of police ill-treatment since the 2007 visit. Nevertheless, the CPT wishes to stress that it is important for the authorities to remain vigilant and pursue their efforts to completely root out ill-treatment.

An overview of complaints of ill-treatment by police officers reported to the public prosecutor showed 17 cases in 2009, 57 in 2010, 15 in 2011, 23 in 2012 (of which two were prosecuted as acts of torture), and 17 in 2013. Of the 17 cases in 2013, most complaints involved allegations of either a push or a slap by a police officer.

The CPT would like to be informed of the disciplinary/criminal sanctions imposed in respect of the complaints of police ill-treatment for the years 2010 to 2014 inclusive.

3. Safeguards against ill-treatment

a. introduction

127. The CPT attaches particular importance to three fundamental safeguards for persons deprived of their liberty by the police: the right of those concerned to inform a close relative or another person of their choice of their situation; the right of access to a lawyer; and the right of access to a doctor. These three rights represent fundamental safeguards against the ill-treatment of persons deprived of their liberty, which should apply from the very outset of custody. In addition, it is important that all detained persons are informed of their rights in a language they understand.

b. notification of custody

128. Under the Code of Conduct and Use of Force Instructions for the Police Force of the Netherlands Antilles[73] a police officer shall immediately inform a relative or household member of the detained person's arrest. If the detained person is a minor the police shall do this on their own initiative. However, if the detained person is an adult, notification shall be made only upon request. If circumstances prevent the police from doing so when a detained person is not a resident of Curaçao, the consulate of the country of which he/she is a resident should be notified of the arrest.[74]

Most persons interviewed indicated that their right to promptly inform a close relative or another person of their choice of their arrest had been respected. Notification is mostly performed by the police, however, as restrictions on contact with the outside world exist in most cases during the first 10 days of detention.

---

72 See for instance "*SIRBI I PROTEHÁ – normen en richtlijnen voor OM-afhandeling interne zaken KPC*".

73 *Regeling ambts- en geweldsinstructie KPNA* (Official Bulletin of the Netherlands Antilles 2001, no. 73), (hereinafter Police Code of Conduct).

74 Article 12 of the Police Code of Conduct.

c. access to a lawyer

129. As the CPT has stated in the past, its objective of guaranteeing an effective right of access to a lawyer during police custody is not primarily linked to issues of due process or the right to a fair trial; it is aimed at preventing ill-treatment. In the CPT's experience, it is during the period immediately following the deprivation of liberty that the risk of intimidation and ill-treatment is at its greatest.

It follows that to be effective as a safeguard against ill-treatment, access to a lawyer must be guaranteed as from the very outset of deprivation of liberty. The right of access to a lawyer must include the right to talk to him/her in private; the detained person should also, in principle, be entitled to have the lawyer present during any interview with law enforcement officials.

130. The right of detained persons to have access to a lawyer is formally guaranteed in Article 48 of the CCP. However, there is no specific right to consult a lawyer as from the very outset of police custody. Article 48(4) CCP states that legal counsel may not be present during police interviews until the suspect has appeared before an investigating judge, which can take up to three days and 16 hours from the moment of arrest.

Following the judgment of the European Court of Human Rights in the case of *Salduz v. Turkey*[75] and the Dutch Supreme Court's interpretation of its impact on the Dutch legal system, the modalities of the right of access to a lawyer for persons detained by the police in the Kingdom of the Netherlands underwent important changes. Any criminal suspect is now entitled to consult his/her own lawyer prior to the first interview on the substance of the case and, in the case of a minor, the lawyer can be present during interviews (but cannot actively intervene during the questioning). In Curaçao, this is reflected in a policy document of the Public Prosecutor, which mentions a right to consult a lawyer before the first interview, but not to have a lawyer present during police interviews. In practice, it appears that, particularly in serious cases, lawyers are often allowed to be present.

The delegation received no complaints from detained persons regarding their right to be assisted by a lawyer. They were duly informed of their right to consult a lawyer and could do so before police interviews started. However, in most cases such contact with a duty lawyer (*piketadvocaat*) was by telephone, and detained persons usually only met with their lawyer when appearing before a judge.

The delegation was informed that the draft CCP includes the right for suspects to have a lawyer present during police interviews in serious cases. While this would indeed be an improvement, additional steps are required to render the situation satisfactory.

The CPT recommends that the Curaçao authorities ensure that all persons arrested have the right of access to a lawyer from the very outset of their deprivation of liberty, including during any police interview. Such a right should include access to an ex officio lawyer if required.

75 *Salduz v. Turkey* (Application no. 336391/02), 27 November 2008.

d. access to a doctor

131. According to Article 17 of the Police Code of Conduct, a doctor shall be consulted in the case of a specific request to see a doctor or when a detained person is clearly ill or injured. The information gathered during the visit suggests that detained persons were able to consult a doctor if needed.

However, the delegation did receive complaints from persons in police custody who were held in Block 1 in SDKK. Whenever a detained person requested medical attention, prison officers had to call a police doctor or nurse. Such a procedure can cause serious delay and is completely unnecessary given the fact that the prison has its own medical service.

In the context of the CPT's overall recommendation to place Block 1 under the full authority of SDKK (see paragraph 120), **the CPT recommends that the medical care for all persons held in Block 1 be placed under the responsibility of the prison health-care service.**

132. The delegation further found that no medical screening was performed on detained persons arriving at Block 1. Prompt medical screening of newly arrived detained persons is essential to prevent the spread of transmissible diseases and for recording injuries in good time. Medical screening can also be used to identify mental illness, addictions and dietary needs.

The CPT recommends that every newly admitted prisoner to SDKK be medically assessed (see also paragraph 167).

133. Curaçao is a major trafficking point for the transportation of cocaine emanating from South America and destined for North America and Europe. Drug trafficking by body-packers (*bolita- or bolletjesslikkers*) continues to be a serious problem. The Rio Canario Police Station was designated to hold these suspects. In 2005, the cell block was fitted with special toilets to recover drugs that were swallowed or otherwise inserted into the body. In addition to specialised equipment, however, detention of suspected body-packers requires appropriate medical supervision, due to the serious risk of acute intoxication and obstruction of the intestines, both of which may lead to death. Laxatives were administered by police officers without guidance from health professionals, which can be dangerous given the risk of side effects and contraindications leading to medical complications.

The CPT recommends that appropriate medical supervision always be made available for the detention of suspected body-packers. It would further like to receive information on the temporary airport facility for the detention of body-packers and the treatment and care protocols in place there, as well as in the new cells at Rio Canario Police Station.

e. information on rights

134. Article 82 CCP states that a person who has been arrested shall be promptly informed of the reasons for his/her arrest, the right to an attorney, and the right to remain silent. This shall be done in a language he/she understands and shall also be provided in writing. The written notification shall at all times be available in at least Dutch, Papiamentu, English and Spanish.

In 2007, the CPT recommended that the written information on rights sheet that is provided to detainees includes a reference to the right to have a close relative or other person notified of one's arrest, and the right to have access to a doctor.[76] The notification of rights sheets collected by the delegation in 2014 did indeed include such a reference in the Dutch version. The versions in Papiamentu, English, Spanish and French, however, did not. **This lacuna should be corrected in order to ensure that all the various language versions are accurate.**

f. electronic recording of police interviews

135. The electronic (i.e. audio and/or video) recording of police interviews represents an important additional safeguard against the ill-treatment of detainees. Such a facility can provide a complete and authentic record of the interview process, thereby greatly facilitating the investigation of any allegations of ill-treatment. This is in the interest both of persons who have been ill-treated by the police and of police officers confronted with unfounded allegations that they have engaged in physical ill-treatment or psychological pressure. Electronic recording of police interviews also reduces the opportunity for defendants to later falsely deny that they have made certain statements.

There is currently no practice of recording police interviews on Curaçao. However, the new draft CCP includes an obligation to record police interviews in serious cases. The CPT welcomes the fact that the recording of police interviews will be made a standard practice. **Nevertheless, it would like to be informed as to which cases will be covered by this practice.**

Further, the CPT recommends that the system to be introduced should offer all appropriate safeguards (such as the use of several tapes, one of which would be sealed in the presence of the detained person and a copy used as the working tape). A copy of the electronic recording should be made available to the detained person and/or his/her lawyer on request. The obligation to record should be reflected in applicable laws and policies.

---

76 See the report on the 2007 visit (CPT/Inf (2008) 2), Part 3, paragraph 26.

g. custody records

136. In the report on the 2007 visit, the CPT noted that custody recording practices varied considerably from one police station to another, none providing a comprehensive custody record. It recommended that authorities consider the possibility of drawing up an individualised custody record for use at all police stations and including all aspects of custody, as well as all measures taken in connection with it.[77] Since then, the comprehensive ICT application ACTPOL has been developed and made available for use at all police stations.[78] The CPT welcomes the introduction of this system. However, on a number of occasions it appeared that only basic information was recorded, leaving out other actions relating to detained persons (e.g. visits received, requests made and incidents).

The CPT recommends that clear guidelines on the use of the system be introduced, in the light of the above remarks.

137. The CPT found that individual custody records, both at police stations and at Block 1 at SDKK, often only included a copy of the first warrant for police custody (*bevel tot inverzekeringstelling*), while further warrants could not be found. It appeared that extension of custody was communicated by the prosecutor by phone, but police and prison officials were not provided with a copy of the valid warrant.

The CPT recommends that a valid warrant, providing the legal basis for custody, always be kept in the individual custody record of a detained person. A valid warrant should automatically be provided by the authority ordering the custody to the authority responsible for executing it.

4. Conditions of detention

138. In the report on the 2007 visit, the conditions of detention in *Barber Police Station* were severely criticised.[79] At the time of the 2014 visit, the delegation observed that this facility had been renovated.

An in-cell call-bell system had been installed, as well as three surveillance cameras in the corridors of the detention block. Air-conditioning now ensured comfortable temperatures. The cell block consists of ten cells, each measuring some 6.5 m² and equipped with in-cell semi-partitioned toilet and shower; eight of the cells had two beds. However, access to natural light was very limited. The CPT notes that cells under 7 m² provide limited space for one person and are absolutely inadequate for keeping more than one detained person for overnight detention.

---

77 See the report on the 2007 visit (CPT/Inf (2008) 2), Part 3, paragraph 27.

78 ACTPOL can be used to register at least the following information in individualised files: general information (name of detained person, date and time of start and end of custody, ID number of the commanding officer and status), the charge, searches performed and personal goods taken into possession, limitations, cell occupation, transfers, dietary needs (including type of food, quantity, times, allergies), medical information (including medication needed, where medication is kept and when and how it should be provided), health insurance information, financial transactions relating to the detained person, and other relevant information, such as cell searches, visitors, requests of the detained person, phone calls made on behalf of the detained person, etc.

79 See the report on the 2007 visit (CPT/Inf (2008) 2), Part 3, paragraph 19 and 20.

In sum, material conditions could generally be considered as satisfactory for the purposes of police detention not exceeding a few days, if all cells are used for single-occupancy only and access to natural light is improved.

The CPT recommends that the Curaçao authorities take the necessary steps in the light of the above remarks.

139. By contrast, material conditions at *Rio Canario Police Station* continued to be inadequate and the renovations planned for 2014 had still not taken place at the time of the CPT's visit. There was very limited access to natural light in the 14 cells and the temperatures in these cells were high (between 30 and 35 degrees Celsius). Seven cells had serious sewage problems resulting in a putrid smell pervading the whole cell block.

The CPT recommends that the Curaçao authorities proceed rapidly with the planned renovations.

Four new cells visited by the delegation were not yet in use. The delegation, however, observed that access to natural light was limited in these cells as well.

140. *Block 1 of SDKK* consists of 15 cells, each measuring 8.5 m² and has an official capacity of 37. At the time of the visit, however, seven cells were out of order and the block was holding 13 persons; 11 police detainees and two prisoners on protection.

Block 1 was found to be in a state of dilapidation and disrepair, with holes in the ceilings of the cells, leaking water, dysfunctional sanitary facilities, lack of access to natural light and non-functioning artificial lighting. Rats, cockroaches, pigeons and other pests infested the block. The lack of care was illustrated by the label on the fire extinguisher, which stated it was due for its next inspection in August 2010. There was only one way out of the block, through a corridor with several locked doors, creating a dangerous situation in the event of a fire or other emergency.

At the end of the visit, the delegation highlighted the poor material conditions of detention in Block 1 and requested that the Curaçao authorities take urgent steps to renovate this block.

By letter of 24 September 2014, the authorities informed the CPT that renovations of Block 1 were ongoing and planned to be finalised in February 2015. These renovations were to include new sanitary facilities and new lighting as well as beds, mattresses and pillows from prisons in the Netherlands that had been closed.

The CPT would like to receive confirmation of the implementation of the announced renovations and refurbishments.

141. Detained persons in Block 1 had no access to television, radio or newspapers and no activities were offered. Access to the outdoor exercise yard (56 m²) for one hour per day was provided if more than one prison officer was present. The yard was equipped with a basketball ring, but no seats or shelter from the sun or rain. Indeed, while each shift was supposed to have four officers, often only two were present and about twice a week only one officer was on duty. The delegation further observed that extensive restrictions, including on contact with the outside world, are almost automatically imposed by the prosecutor for the first ten days of detention.

The CPT recommends that the Curaçao authorities ensure that all detained persons are offered a minimum of one hour of outdoor exercise every day. Further, an improved regime should be put in place as detention at Block 1 generally lasted up to ten days and often even longer.

The CPT also recommends that the regulations governing access to visits, telephone calls, newspapers, radio and television are reviewed in order to ensure restrictions are imposed only when required to protect the legitimate interests of the police investigation, assessed on a case by case basis, in accordance with Article 90(1) of the CCP.

142. The police stations of Barber and Rio Canario continued to be used for longer periods of detention whenever certain prisoners were considered to be at risk among the general population at SDKK.

One person interviewed by the delegation[80] claimed that he had been held at Barber Police Station in complete isolation for 40 days, after which he had been allowed to go for outdoor exercise together with other detained persons. He said that the only reading material permitted was a bible and that he had received a small radio after seven months. He further claimed to have been without a blanket for two months. Conditions such as these, which are akin to solitary confinement, could amount to inhuman and degrading treatment.

Another person interviewed indicated that he had been held at Rio Canario Police Station for eight months, with no radio or television or reading materials. He had access to outdoor exercise for two hours in the morning and two hours in the afternoon in the large exercise yard.

The CPT reiterates that the conditions of detention at police stations are completely inadequate for long-term detention.

The CPT recommends that the Curaçao authorities make every effort to find alternative solutions to long-term detention at police stations, such as the use of a special unit within SDKK (see also paragraph 185).

---

80 This person was held at Barber Police Station from 20 September 2013 until 12 May 2014, when he was transferred to a general population block at SDKK. While authorities claimed that his placement there was for his own protection, the fact that he was consequently transferred to a general population block would appear to belie this argument. The detained person claimed that his conditions of detention were designed to pressure him to confess as he had stated explicitly that he had no problems with being held at SDKK and had formally requested transfers at least twice.

Should a person be detained longer than a few days at a police station, he or she should be provided with access to activities, such as reading materials, radio, television and increased access to outdoor exercise. The longer a person is detained in such conditions, the more activities should be provided.

Further, the CPT would like to be informed of the legal basis used for long-term placement in police stations.

143. The person who had been detained for eight months at Barber Police Station further stated that he had been kept naked in his cell for a period of two weeks in October 2013. He alleged that this was punishment following an incident with a police officer, while the official reason provided was that this was a protective measure as he was considered to be at risk of committing suicide. Such a situation is unjustifiable whatever the scenario.

Persons who are deemed to be at risk of suicide should be placed in a cell which has no ligature points and provided with rip-proof clothing. Further, the person should be placed under constant personal observation and provided with the opportunity to talk to a health-care professional.

The CPT recommends that the Curaçao authorities draw up a care protocol for all detained persons who are deemed to be at risk of suicide while in police custody, taking into account the above remarks.

Further, it goes without saying that persons should never be placed naked in a cell under any circumstances, let alone as a form of punishment.

B. Centre for Detention and Correction Curaçao - SDKK

1. Preliminary remarks

144. The prison, located in the neighbourhood of Koraal Specht, and formerly known as Bon Futuro, changed its name in 2010 to Centre for Detention and Correction Curaçao (*Sentro di Detenshon i Korekshon Kòrsou* or SDKK). This was the CPT's sixth visit to this establishment. In its report on the 2007 visit, the CPT stated that it had received several allegations of physical ill-treatment by prison staff, most of them involving an intervention by members of the Correctional Emergency Response Team (CERT). It had further expressed serious concerns with regard to the problem of inter-prisoner violence. Material conditions in the disciplinary unit were severely criticised, as was the absence of a call-bell system.

145. The official capacity at SDKK was 674 (similar to the number in 2007). However, the actual capacity had been drastically reduced due to many cells being out of commission as they were not considered fit for human occupation. At the time of the visit, SDKK had a total of 399 places, including the psychiatric unit, high security unit, women's unit and the semi-open unit for men, and was holding 332 inmates, with all 298 places in the general population blocks occupied.[81]

146. In June 2010, as part of preparations for the constitutional changes of the Kingdom of the Netherlands, it was agreed that Curaçao would have to develop a specific action plan (*Plan van Aanpak*) with regard to certain institutions and report regularly on the implementation of these plans. The action plan for SDKK included plans to improve the physical state of the prison, the security of the prison, the regime for and treatment of prisoners, and the correction and reintegration function of the prison, as well as its management. Implementation of this plan has clearly had a positive impact on SDKK to date.[82] However, much work remains to be done.

147. At the outset, the CPT would like to note that it observed gaps in documentation held by the prison administration at SDKK. The delegation found that files of unsentenced prisoners generally did not contain any written warrants providing a legal basis for their detention, as extensions of detention were being communicated by the Prosecutor's Office by phone. Further, there were no registers regarding incidents, use of force, use of means of restraint, injuries or complaints. The delegation also found irregularities in the list of prisoners, such as the inclusion of a certain prisoner who had already been released more than a month earlier and another prisoner who had been transferred to the Netherlands two months earlier.

Proper administration and documentation is crucial for effective prison management.

The CPT recommends that a full review of the record-keeping system at SDKK be carried out, including the introduction of the above-mentioned registers and full documentation of the legal basis for the detention of each individual held at SDKK.

---

81 These are the numbers reflected in the official documents provided to the delegation, dated 4 May 2014.

82 For example, security had improved through the construction of a separate entrance outside the main prison premises where visitors are checked and goods are being received.

2. Ill-treatment

148. In the course of the 2014 visit, the delegation received no credible allegations of ill-treatment of inmates by prison staff, which represents a significant improvement since the 2007 visit. It did, however, receive some allegations of abusive language by prison officers.

The CPT recommends that the Curaçao authorities deliver the clear message to prison officers that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of sanctions.

149. The delegation also received several allegations of inter-prisoner violence and prisoners alleged reluctance on the part of staff to intervene when such incidents occurred. While a decrease in violence can be noted compared to the previous visit, these numbers still need to be reduced further in order to ensure safe custody for all prisoners.

Addressing the phenomenon of inter-prisoner violence and intimidation requires that prison staff be alert to signs of trouble and both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of dynamic security and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. It is also obvious that an effective strategy to tackle inter-prisoner intimidation/violence should seek to ensure that prison staff are placed in a position to exercise their authority in an appropriate manner. Consequently, the level of staffing must be sufficient (including at night-time) to enable prison officers to supervise adequately the activities of prisoners and support each other effectively in the exercise of their tasks. Both initial and ongoing training programmes for staff of all grades must address the issue of managing inter-prisoner violence.

In addition, a key component in the management of inter-prisoner relations is the careful assessment, classification and cell allocation of individual prisoners within the prison population.

The CPT reiterates its recommendation that the prison management of SDKK develop a strategy to address the challenge of inter-prisoner violence, taking into account the above remarks.

Further, all incidents and injuries resulting from violence should be registered so as to better monitor the situation and identify potential risks in order to prevent inter-prisoner violence.

3. Conditions of detention

a. material conditions

150. The CPT noted some improvements of the material conditions in comparison to previous visits. Nevertheless, serious problems remained in a number of blocks (particularly Blocks 2, 7B and 8) which were in a bad state of repair and had sewage problems, escalating the poor hygiene conditions and causing a foul stench. Some efforts were being made to control pests, but these appeared to be inadequate given the presence of rats, cockroaches, pigeons and other pests. Many of the cells were out of use due to leaks and other problems, creating a health hazard. Stagnant water provided a breeding ground for mosquitoes. The Prison Supervisory Committee (*Commissie van Toezicht*) had warned that fire safety measures were not in place and that the necessary equipment and security checks were not performed regularly; this was confirmed by the delegation.

The CPT recommends that the necessary steps be taken to refurbish and improve the material conditions at SDKK in the light of the above remarks.

b. regime

151. According to an overview of available workplaces in 2013, the number of places per month fluctuated between 178 and 201, roughly two-thirds of which related to cleaning. There were approximately 35 places in the different workshops (sewing, carpentry, car mechanics and upholstery), between 7 and 15 places in maintenance, around 20 places in the kitchen. The overview does not show, however, for how many hours per day or week a certain prisoner is actually engaged in labour for each of these functions.

The building and refurbishing of workshops, a fitness centre, a computer room and classrooms had created more physical space for purposeful activities. The schedule of regular activities provided to the delegation showed that every block had access at least once a week to sports, fitness, the library and spiritual development (BGV).

Moreover, the programme of education on offer as of January 2014 included classes on social skills (for those nearing their release date), computer skills, handicrafts, literacy (Papiamentu) and finally music classes for those in JoVo and FOBA.[83]

152. Certainly, the number of activities being offered represented a major step forward compared to the situation found in 2007. Nevertheless, the delegation received numerous complaints from prisoners about the lack of activities on offer, particularly educational and work opportunities, and observed that most prisoners spent their days in a situation of enforced idleness. Many prisoners stated that they did not have any opportunity to work or study. The offer of vocational courses appeared to be sporadic, offering a certain class for a couple of months which was subsequently no longer available for a while. The delegation found that shortage of both staff on post and other resources seriously affected access to activities.

---

83 See explanation in paragraph 171.

Ensuring that prisoners are engaged in purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association) is not only an essential part of rehabilitation and resocialisation, but it also contributes to the establishment of a more secure environment within prisons.

The CPT recommends that Curaçao authorities vigorously pursue their efforts to put in place a range of purposeful activities for all prisoners.

153. Documentation provided to the delegation showed that a number of prisoners who were enrolled in certain courses stopped active participation or dropped out completely, citing a preference for employment over studying as a reason. Taking part in educational activities should not place prisoners at a disadvantage by depriving them of the opportunity to earn money.

The CPT recommends that opportunities be created in such a way that those who study continue to have the possibility to earn an income.

c. juveniles and young adults

154. In November 2009, a special young adults section (*jong volwassenen* or JoVo) was opened at SDKK, with a capacity of 34. This block holds juveniles and young adults between the ages of 16 and 24. The National Ordinance on Compulsory Youth Training of 2006 provides that juveniles and young adults between the ages of 16 and 24 are obliged to participate in a social and educational programme if they have no educational qualifications. Block JoVo was developed to accommodate those who fall under this obligation and is intended to offer a range of educational programmes, including personal and work skills training, language/literacy classes and sports therapy. At the time of the visit, the delegation was informed that JoVo was also used to accommodate first-time offenders and remand prisoners. The amount of activities actually on offer did not appear to correspond with what was supposed to be on offer. In addition, remand prisoners were not provided with any activities, other than access to the gym twice a month for half an hour.

A full programme of activities should be available for young adults held at JoVo, including for those on remand.

155. At the time of the visit, only two juveniles were being held in JoVo, one of whom was on remand and was offered no activities and provided with no support. Further, the conditions in the cells were no better than elsewhere in the prison, and showed signs of dilapidation and poor hygiene (e.g. blocked toilets and water leakage).

In the CPT's view, all juvenile prisoners, including those on remand, should be held in detention centres specifically designed for persons of this age, offering regimes tailored to their needs and staffed by persons adequately trained in dealing with young persons. A multidisciplinary approach is needed, drawing upon the skills of a range of professionals (including teachers, trainers and psychologists), in order to respond to the individual needs of juveniles within a secure educative and socio-therapeutic environment and offer them a wide range of opportunities to demonstrate personal growth and competence acquisition.

The CPT recommends that juveniles not be held at SDKK, but exclusively accommodated at a juvenile institution.

d. women prisoners

156. The unit for women at SDKK had a capacity of 55 places, plus five disciplinary cells and a baby room. The baby room was last used in July 2013 when a baby was allowed to stay with its mother for two months. The Prison Supervisory Committee informed the delegation that they had repeatedly raised the issue of the development of a specific policy for babies in prison. At the time of the visit, no such policy was in place.

In the view of the CPT, the governing principle in all cases must be the welfare of the child. This implies in particular that any ante- and post-natal care provided in custody should be equivalent to that available in the outside community. Where babies and young children are held in custodial settings, their treatment should be supervised by specialists in social work and child development. The goal should be to produce a child-centred environment, free as far as possible from visible signs of incarceration, such as uniforms and jangling keys.

The CPT recommends that an adequate policy on babies in prison be developed bearing in mind the above considerations.

157. At the time of the visit, there were eight female prisoners. The set-up of the unit remains the same as that described in the report on the 2007 visit,[84] generally providing satisfactory material conditions, although there were complaints of rats and crabs in the block at night. Since the 2007 visit, the disciplinary cells had been renovated. However, the shower and toilet were too close to each other for hygienic conditions to be maintained.

The CPT recommends that the design of the sanitary facilities be changed so that the toilet is separate from the shower.

158. Activities offered to female prisoners included classes on handicrafts, sewing, manicure, pedicure and hairdressing. Some women were offered cleaning jobs for a few hours a day. The women complained that they were not offered sufficient schooling opportunities and were not adequately prepared for their release. They further expressed dissatisfaction with medical care and a lack of psychological support.

Women deprived of their liberty should enjoy access to meaningful activities (work, training, education, sport, etc.). The female prisoners at SDKK should not only be offered activities which have been deemed "appropriate" for them (such as sewing and handicrafts), whilst male prisoners are offered training of a more vocational nature. In the view of the CPT, such a discriminatory approach can only serve to reinforce outmoded stereotypes of the social role of women.

---

84 See the report on the 2007 visit (CPT/Inf (2008) 2), Part 3, paragraph 47.

The CPT recommends that women be offered additional schooling and meaningful work opportunities, as well as psychological support, in order to adequately prepare them for their release.

4. Prison staff

159. In 2007, the CPT severely criticised the totally inadequate numbers of prison officers at Bon Futuro Prison, creating a situation in which staff were not in control of prisoners within the establishment.[85] While staffing levels have improved, serious problems with staffing, due to both vacancies and high levels of absenteeism, have continued over the years. A serious issue in recent years has been the lack of qualified managers in the prison due to a high turnover of staff and several vacancies not being filled for extensive periods of time.

The delegation received complaints from staff members, and particularly from representatives of the trade union ABVO,[86] that changes in political power often led to changes in management, creating instability and hampering progress. Another problem was the serious delay in the official adoption of the 2009 'book of functions' (*functieboek*), creating difficulties in recruitment in line with the actual need. Since mid-2013, however, key management positions have gradually been filled, while technical support staff continue to be sent from the Netherlands.

At the time of the visit, it was reported that the position of Human Resources Manager, which had been vacant for more than two years, was going to be filled from 15 May 2014. Management of human resources had been minimal with little vision on how to address the serious problems of staff attendance. The delegation found, for example, that data entry with regard to staff absence was several months behind and little had been done in recent years to motivate staff and address concerns.[87]

The CPT recommends that the newly appointed Human Resources Manager urgently address the above-mentioned shortcomings. It further recommends that the 2009 book of functions be adopted as a matter of urgency.

160. Professionalisation of staff should see the role of a prison officer evolving from that of essentially a "turn-key" with no responsibility other than that of static security. Instead, prison officers should be encouraged to extend their role into interacting positively with inmates, taking part in rehabilitation programmes and being an integral element in a multi-disciplinary approach towards prisoners' welfare. This would not only provide a far more challenging and interesting job for the prison officers but it would also address the rehabilitation aspect of prison which has to date been neglected. Of course, this would necessitate introducing far more training for those prison officers capable and willing to take up this additional role.

---

85 See the report on the 2007 visit (CPT/Inf (2008) 2), Part 3, paragraph 53.

86 ABVO stands for *Algemene Bond van Overheidspersoneel* (civil service union).

87 The Quality and Auditing Manager had initiated an investigation into absenteeism due to illness, but also found that it was very hard to address the problem when up-to-date data was not available. Further, a draft protocol to address absenteeism had been developed, but had long been awaiting adoption. At the time of the visit, it had not yet been adopted.

In the light of the above remarks, the CPT welcomes the large scale retraining of 140 prison 'guards' into prison 'officers' and **recommends that all prison officers be offered regular in-service training.**

5. Health-care services

161. The CPT recalls that the task of prison health-care services should not be limited to treating sick prisoners. They should also be entrusted with responsibility for social and preventive medicine. In particular, a prison health-care service should ensure that information about transmissible diseases is regularly circulated, to both prisoners and prison staff. Suicide prevention is another matter falling within the purview of a prison's health-care service. Further, it lies with prison health-care services to supervise catering arrangements (quantity, quality, preparation and distribution of food) and conditions of hygiene. Provision of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly.

The findings of the 2014 visit demonstrate that there remain a number of important structural deficiencies in the provision of health care to prisoners.

a. staffing, premises, financing and organisation

162. The medical service at SDKK was staffed by two part-time doctors ensuring a doctor's presence only between 10 a.m. and 2.30 p.m. on weekdays.[88] Outside these hours they are on call on a rota basis. This is totally insufficient for a prison with an operating capacity of more than 400 places. At a minimum, the prison should benefit from the equivalent of a full-time doctor. Moreover, only three of the seven full-time nursing positions were filled, since four nurses left in 2012; one of the three will retire in 2015. A dentist visits twice a week from 9 a.m. to 2 p.m.

The lack of staff meant that the shift system in place at the time of the visit resulted in a situation where no health-care staff were present at the prison between the hours of 6 p.m. and 8 a.m. on weekdays, and for the entire weekend.

A psychiatrist attended SDKK (apart from FOBA, see paragraphs 172 and 173) one day a week, which is insufficient for a population of more than 330 prisoners, many of who have mental health issues. Prisoners did not benefit from psychological care (one psychologist attended only the FOBA unit). In the CPT's view, an establishment of the size of SDKK should be able to rely on the services of at least one full-time psychologist.

The CPT calls upon the Curaçao authorities to ensure that efforts be made to secure the equivalent of at least one full-time doctor at SDKK and that steps be taken to fill the vacant posts for nurses.

The CPT further recommends that steps be taken to ensure that a member of the health-care staff is present every day, including at weekends, and that someone qualified to provide first aid always be present in the prison, including at night.

---

[88] One doctor visits the prison on Mondays, Wednesdays and Fridays, the other doctor on Tuesdays and Thursdays.

In addition, the CPT recommends that a full-time psychologist be recruited as soon as possible for SDKK and that the availability of the psychiatrist be increased in order to ensure appropriate psychological and psychiatric care for prisoners.

163. The premises of the medical service at SDKK comprise a nursing station, a GP's surgery, a dentist's surgery, an examination room and a small in-patient ward with three beds. As regards equipment, the delegation noted that the medical service did not have an ECG or a defibrillator at the time of the visit.

The CPT recommends that a defibrillator and ECG be purchased.

164. The medical service suffers from serious financial insecurity, leading to extreme delays in payment of staff, the laboratory and the pharmacy. One dentist had resigned as a result of non-payment, while the current dentist stated that he had not been paid for six months and one doctor stated that he had not been paid for 18 months. Other visiting health-care staff, such as the psychologist, psychiatrist, physiotherapist and dietician had also not been paid for periods of more than one year. The dietician had stopped visiting SDKK as a result of non-payment. For the same reason, the pharmacy had halted the supply of medicines for a number of days in December 2012, and in 2014 the laboratory had refused to perform tests for SDKK for four weeks. Appointments with external specialists were also postponed at times due to the inability of SDKK to pay for the treatment.

The CPT recommends that the Curaçao authorities take the necessary steps, including at management level, to ensure the financial security of the medical service in order to guarantee prisoners a minimum standard of continuity of care. In this connection, consideration might be given to developing a closer partnership with the Ministry of Health, with a view to improving quality control and access to health care.

165. The delegation received a number of complaints regarding a delay in access to health care. From the moment a request to see a nurse or doctor was filed to the time they had their consultation, several weeks could pass.

In order to assess the accessibility of health care and the adequacy of response to requests, the time between filing a request and the actual visit to the doctor and start of treatment should be monitored.

The CPT recommends that steps be taken to ensure prompt access to health care for prisoners.

166. Regarding the administration of the medical service, the delegation observed that consultation requests, medical information and treatment were kept in separate files, rather than keeping them together in a single patient medical file. Further, information regarding treatment and findings by external specialists was not kept at all. There was also no clear order (for example chronological) in the files and there was no electronic record-keeping. The delegation found that the administration of medical files and data did not allow a clear overview on the quality of care.

The CPT recommends that the administration of the medical service be reorganised, ensuring that all relevant information in relation to a patient can be found in his or her personal medical file.

b. medical screening, recording of injuries and confidentiality

167. Prompt medical screening of newly arrived prisoners is essential to prevent the spread of transmissible diseases and for recording injuries in good time. Medical screening can also be used to identify mental illness, addictions and dietary needs. The CPT noted that medical screening was generally carried out days, weeks, and even months after the prisoner’s arrival, with some prisoners claiming that they were never checked at all; this is not acceptable. Further, the screening generally only consisted of an interview on the personal and family history of diseases and upon suspicion of HIV or hepatitis C or B, blood samples were taken and sent to the laboratory, with the consent of the prisoner.

The CPT reiterates its recommendation[89] that every newly admitted prisoner be properly interviewed and physically examined by a medical doctor (or by a fully qualified nurse reporting to a doctor) as soon as possible after his or her admission; save for exceptional circumstances, the interview/examination should be carried out within 24 hours.

168. The delegation noted that no guidelines or procedures exist at SDKK for the systematic identification of ill-treatment. The CPT has consistently pointed out that prison health-care services can make a significant contribution to the prevention of ill-treatment of detained persons through, inter alia, the systematic recording of injuries, whether vis-à-vis new arrivals or following a violent episode in prison.

The CPT recommends that measures be taken to ensure that the record drawn up after the medical examination of a prisoner – whether newly arrived or following a violent incident in prison – contains:

(i) an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment);
(ii) a full account of objective medical findings based on a thorough examination;
(iii) the doctor’s observations in the light of i) and ii) indicating the consistency between any allegations made and the objective medical findings.

---

89 See the report on the 2007 visit (CPT/Inf (2008) 2), Part 3, paragraph 56.

Recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with "body charts" for marking traumatic injuries that will be kept in the medical file of the prisoner. If any photographs are made, they should be filed in the medical record of the inmate concerned. In addition, documents should be compiled systematically in a special trauma register where all types of injuries should be recorded.

The results of every examination, including the above-mentioned statements and the doctor's opinions/observations, should be made available to the prisoner and, with the consent of the prisoner, to his or her lawyer. Further, the existing procedures be reviewed in order to ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the report is immediately brought to the attention of the relevant prosecutor regardless of the wishes of the person concerned.

169. As regards medical confidentiality, the CPT's delegation found that it was partially respected. It appeared that medical examinations generally took place out of the hearing and sight of custodial staff and that medical documentation was only accessible to health-care staff. However, prisoners requesting medical care had to submit a request form to a prison officer who passed it on to the medical service. Prisoners were obliged to indicate a reason for their request but no envelopes were provided, which meant that the prisoner's medical confidentiality was not guaranteed.

The CPT recommends that appropriate steps be taken to ensure that prisoners are able to have access to the prison's health-care service on a confidential basis, not exposing medical information to non-medical staff.

170. The delegation observed that the in-patient ward was used at times to accommodate prisoners who had no medical indication but who were segregated since they were at risk among the general population.

The CPT recommends that placements in the in-patient ward of the prison be made exclusively on the basis of medical criteria, by decision of the responsible medical professionals.

c. deaths in custody

171. In 2013, a 36-year old woman prisoner died from cardiomyopathy after having waited for several hours before the doctor came to see her.

Deaths in custody should systematically be the subject of an investigation, in order to establish the cause of death, identify possible criminal and/or disciplinary responsibility and ascertain whether there are lessons to be learned for the future as regards operating procedures. Such investigations should always include an autopsy.

The CPT was informed that an investigation had indeed been carried out into this death in 2013. **The CPT would like to receive the outcome of this inquiry, including the autopsy report.**

d. FOBA

172. The forensic psychiatric support unit (*forensische observatie- en begeleidingsafdeling* or FOBA) continued to offer good material conditions in the two-storey building, as well as a positive atmosphere. FOBA accommodates remand prisoners for observation purposes upon order of the investigating judge, as well as sentenced prisoners who have been diagnosed with serious mental disorders. However, it appeared that FOBA also continued to be used to hold prisoners considered to be at risk among the general population, particularly juveniles. At the time of the visit, FOBA had a capacity of 23 beds; occupancy on the first day of the visit was 19, of which 17 had been diagnosed with a psychiatric disorder and two others were juveniles (15 and 16 years old) who were placed there by order of the prosecutor.[90]

The CPT recommends that placements at FOBA are exclusively made on the basis of medical criteria, by decision of the responsible psychiatrist.

173. As regards treatment, the delegation found that the unit was well-managed and adequately equipped. Individual care plans were found in the medical files and patients were involved in the development together with the mentor, who is a member of the prison staff allocated to FOBA. The stock of medication was very good, with a wide range of new generation medication.

Further, a psychologist and a psychiatrist visit three mornings a week and are on call 24/7 for consultations regarding FOBA patients. Every Friday, a nurse prepares the medication for each patient, which is then distributed by prison officers. A social worker visits once a week and a nurse or a doctor visits the unit when somatic care is needed. The unit is run by prison officers and medical staff are only present at the times indicated above. The prison staff at FOBA were found to be dedicated and very well trained.

The CPT recommends that medication is distributed exclusively by medical staff.

174. The delegation was informed that instances of forced medication rarely occur, but when the need arises, assistance is called in from the internal assistance team (IBT) to keep a patient under control. In the CPT's view, forced medication should always be administered in a hospital setting.

The CPT recommends that the Curaçao authorities take the necessary steps to ensure that forced medication is never administered in a prison setting and that alternatives be put in place, surrounded by appropriate safeguards.

175. As regards the regime, patients are offered outdoor exercise for four hours a day (two in the morning and two in the afternoon) and have access to a range of activities, including sports three times a week, weekly music classes and other lessons including computer and social skills, gardening and spiritual formation.

---

[90] These juveniles had initially been placed at the Judicial Youth Institute, but after several escapes the prosecutor decided they should be moved to SDKK; due to their age, they were then placed in FOBA.

176. Two of the cells at FOBA were used for suicide watch. The delegation considered the cells to be inadequate for the purposes of holding a person deemed to be at risk of suicide, as such cells should have all ligature points removed. Further, it was possible for other prisoners to engage with those on suicide watch through the metal bar doors, creating a possibility for items to be provided to them which could be used to harm themselves.

The CPT recommends that the Curaçao authorities take steps to remove all ligature points from the cells and to ensure that other prisoners cannot engage with prisoners held in these cells. Further, the CPT would like to receive confirmation that the suicide watch cell at the unit for women prisoners remains out of service as it was considered unsuitable for such a purpose.

177. The CPT notes that while the unit indeed appeared to provide a safe environment for the prisoners who were accommodated there, the unit does not function as a proper psychiatric institution appropriate for offenders who have been ordered to undergo psychiatric treatment. Its location, within a prison environment, and its staffing cannot be considered as adequate for such patients. At the same time, however, the management of the only psychiatric hospital in Curaçao, Klínika Capriles, have indicated that they feel underequipped to accommodate particularly dangerous forensic psychiatric patients (see paragraph 211). Further, the new Criminal Code provides for the sentence of placement in a psychiatric hospital or placement at the disposal of the Government, including confinement in a custodial clinic (the so-called TBS order).

The CPT would like to receive the comments of the Curaçao authorities on this matter.

6. Other issues

a. discipline

178. Disciplinary sanctions are regulated in Chapter X of the National Ordinance on the Prison System (Prison Law) and Paragraph 11 of the Prison Regulation. Available sanctions according to Article 36 of the Prison Law are: solitary confinement, deprivation of the right to receive visitors and send and receive letters, a fine or a warning. The maximum period of solitary confinement is set at two weeks, while the maximum restriction on contact with the outside world is four weeks. A protocol on the disciplinary process provided to the delegation added the possible punishments of being denied to work for a maximum of three weeks and being denied permission to buy articles from the canteen for a maximum period of four weeks.

It was difficult for the delegation to gain a clear overview of the application of disciplinary measures, due to the absence of any register. Nevertheless, it appeared from files that procedures were generally respected. The Prison Supervisory Committee, however, informed the delegation that it regularly observed different disciplinary measures being imposed for similar infractions. It had suggested the introduction of equal punishment for comparable situations and better explanations for the imposition of a certain punishment within the disciplinary decision.

The CPT would like to receive the comments of the Curaçao authorities on this matter. It further recommends that steps be taken to ensure that the documentation and registers concerning disciplinary sanctions are properly maintained, accurately record the times of beginning and ending of the measure, and reflect all other aspects of custody (in particular, the precise location where a prisoner has been held).

179. Complaints regarding disciplinary decisions, placement in segregation or denied requests for segregation can be addressed to the Prison Supervisory Committee's Complaints Committee.[91] In 2013, this Committee received 15 complaints, of which seven were upheld, some on formal grounds, such as incomplete disciplinary decisions or investigation files.

The Prison Supervisory Committee informed the delegation that disciplinary measures often included being denied the possibility to work. When a disciplinary measure was annulled following appeal, prisoners were often not given back their former work, as it would already have been redistributed to another prisoner.

The CPT recommends that measures be taken to ensure that those who have been denied work as part of a disciplinary decision, are reinstated or otherwise compensated in order to redress the consequences of an annulled decision, in line with Article 44(5) of the National Ordinance on the Prison System.

180. The CPT has further noted that solitary confinement was invariably accompanied by the corollary punishment of withdrawal of permission to use the telephone and to receive visits. The Committee has stated clearly that prisoners undergoing a punishment of solitary confinement as a disciplinary sanction should never be totally deprived of contacts with their families and that any restrictions on such contacts should be imposed only where the offence relates to such contacts.

The CPT recommends that the Curaçao authorities take the necessary steps to comply with such an approach.

181. On a more positive note, the delegation found the refurbishment of the disciplinary cells in Block 6 to be a vast improvement of the situation prevailing at the time of the 2007 visit, providing better hygiene, sanitary facilities and access to natural light through the installation of new windows. The cells had not yet been brought back into service at the time of the visit.

The CPT would receive confirmation that these disciplinary cells have been brought back into service.

---

91 Article 40 of the National Ordinance on the Prison System.

182. The riot-team that was in place in 2007[92] has been replaced with an internal support team (*intern bijstandsteam* or IBT), consisting of 30 regular guards who have been given this added responsibility. This is a much better approach. The members of this team have been trained in the Netherlands. The IBT is deployed once or twice a month for cell searching operations. While the delegation did not receive any complaints of physical ill-treatment by the IBT, it did hear several allegations of deliberate destruction of possessions in cells when this team was carrying out the searches. The delegation was informed that members of the Prison Supervisory Committee were in theory called when a search was going to be carried out. In practice, however, it had not always been possible for a Commissioner to be present for monitoring purposes, often due to late notifications.

Planned interventions of this type should be video recorded (e.g. with tactical cameras as part of the equipment of the prison officers concerned) and a prisoner from the cell being searched should be present to ensure the search is carried out correctly.

The CPT recommends that a comprehensive protocol for cell searches be drawn up, taking into account the above remarks.

183. In the report on the 2007 visit, the CPT recommended that the authorities of the Netherlands Antilles review the <u>role of prison doctors in relation to disciplinary matters</u> in order to ensure that they are no longer tasked with approving prisoners' placement in a disciplinary cell.[93] This situation remained unchanged at the time of the 2014 visit.

A prison doctor acts as a patient's personal doctor. Consequently, in the interests of safeguarding the doctor/patient relationship, he should not be asked to certify that a prisoner is fit to undergo punishment.

The CPT recommends once again that the role of prison doctors and nurses in relation to disciplinary matters be reviewed, in the light of the above remarks. In so doing, regard should be had to the European Prison Rules (in particular, Rule 43.2) and the comments made by the Committee in its 15th General Report (see paragraph 53 of CPT/Inf (2005) 17).

184. As regards the existing arrangements for urine tests at SDKK, the CPT considers that urine sample collection and testing for control purposes is essentially a non-medical task that can affect the therapeutic relationship with patients when carried out by health-care staff. For this reason, health-care staff should not be involved in the collection and testing of urine samples for control purposes (i.e. drug abuse). At the same time, staff carrying out urine tests should receive appropriate training, and such tests should be carried out in a place which is distinctly different from the premises utilised by prison medical staff.

The CPT recommends that the necessary steps be taken to end the involvement of health-care staff in carrying out urine tests for control purposes, in the light of the above remarks.

---

92 In 2007, the delegation received a number of allegations of physical ill-treatment by the Correctional Emergency Response Team. See the report on the 2007 visit (CPT/Inf (2008) 2), Part 3, paragraphs 41 to 44.

93 See the report on the 2007 visit (CPT/Inf (2008) 2), Part 3, paragraph 59.

b. segregation of prisoners

185. At the time of the visit, several prisoners who needed to be segregated for their own protection or the protection of others, were held at unsuitable locations. The delegation was shown a newly renovated block consisting of two floors with nine cells each, one floor for disciplinary purposes and the other for segregation. The delegation was informed that the second floor could also be used for protection purposes. The high security unit in Block 6, also used for segregation, was found by the delegation to be in a poor state of repair and in need of renovation.

Every prison system has prisoners who may require protection from other prisoners. This may be because of the nature of their offence, their co-operation with the criminal justice authorities, inter-gang rivalry, debts outside or inside the prison or the general vulnerability of the person. While many prisoners can be managed in the general prison population in these circumstances, the risk to some is such that the prison can only discharge its duty of care to the individuals by keeping them apart from all other prisoners. This may be done at the prisoner's own request or at the instigation of management when it is deemed necessary. States have an obligation to provide a safe environment for those confined to prison and should attempt to fulfil this obligation by allowing as much social interaction as possible among prisoners, consistent with the maintenance of good order.

The CPT considers that prisoners placed in administrative solitary confinement for good order or protection should have an individual regime plan, geared to addressing the reasons for the measure. This plan should attempt to maximise contact with others – staff initially, but as soon as practicable with appropriate other prisoners – and provide as full a range of activities as is possible to fill the days.

The CPT would like to receive confirmation that this new discipline and segregation block is now operational. It recommends that the Curaçao authorities draw up a policy for managing persons who have been placed under protection in the light of the above remarks.

c. complaints and inspection procedures

186. Effective complaints and inspection procedures are basic safeguards against ill-treatment in prisons. Prisoners should have avenues of complaint open to them, both within and outside the prison system, and be entitled to confidential access to an appropriate authority. In addition to addressing the individual case involved, the CPT considers that a careful analysis of complaints can be a useful tool in identifying issues to be addressed at a general level.

The complaints procedure at SDKK prescribes that prisoners should first attempt to resolve any complaint 'informally' by addressing prison staff. If this effort fails, the prisoner may receive a grievance form and submit this to the Prison Grievance Coordinator, within 20 days of the alleged incident. The Coordinator shall assign each request or grievance for investigation and response preparation and present a proposed solution/decision to the Director for approval. This should be finalised within 20 working days of receiving the complaint.

In addition to receiving complaints regarding disciplinary measures and segregation decisions (see paragraph 179) the Prison Supervisory Committee has put in place a system of "Commissioner of the Month" ensuring that one or more Commissioners are appointed for two-week terms to perform inspections in the prison and to speak with prisoners and receive complaints. These complaints are addressed with prison management and, if they are of a more serious nature, they are included in the annual report to prison management and the Minister of Justice. There is no other external body to which prisoners can address formal complaints.

In the course of the visit, several prisoners told the delegation that they did not make use of the complaints system as they had no confidence in it. Given the absence of a complaints register, it was difficult for the delegation to assess the effectiveness of the complaints system in place.

The CPT recommends that the Curaçao authorities review the current system of complaints taking into account the above remarks and introduce a complaints register.

187. Several prisoners complained that they were not properly informed of decision-making regarding conditional release (*voorwaardelijke invrijheidstelling*) or electronic monitoring. They stated that they were informed very close to, or even on the expected day, that they were not being granted release, due to their behaviour in prison or other factors. The result was severe frustration among prisoners.

The CPT recommends that mechanisms be put in place to ensure timely and transparent decision-making with regard to conditional release and electronic monitoring. Further, prisoners should be informed clearly and in due time of the outcome of such decisions.

188. The Prison Supervisory Committee carries out regular visits to all sections of the prison, reporting any concerns directly to prison management and issuing an annual report including specific recommendations, based on observations of Commissioners and complaints heard by prisoners. Prison management should report to the Minister of Justice within three months of receiving the annual report on measures taken to implement the recommendations.[94] The delegation, however, was informed by the Committee that several recommendations that had been made repeatedly over the preceding years had remained unimplemented.

The CPT would like to receive the comments from the Curaçao authorities on this issue. It would also like to receive the response by prison management to the 2013 Annual Report of the Prison Supervisory Committee.

---

[94] Article 47(3) of the 1999 Prison Regulation.

189. The Law Enforcement Council (*Raad voor de Rechtshandhaving*) is an inter-country body of Curaçao, St. Maarten and the Netherlands. The Council is charged with the general inspection of the effectiveness and quality of several agencies and institutions of the judicial systems of Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba. The Council also monitors the effectiveness and quality of judicial cooperation between Curaçao, Sint Maarten and the Netherlands, in so far as the BES-Islands are concerned. While it has a mandate to perform inspections, it does not perform regular visits to all places where persons may be deprived of their liberty. Rather, inspections of the different institutions under its mandate are carried out on a thematic basis, with priorities decided annually. The CPT was informed that an inspection to SDKK had recently been carried out and that a report was being drafted. **The CPT would like to be provided with a copy of this report.**

C. Juvenile Youth Institute Curaçao

1. Preliminary remarks

190. Juveniles deprived of their liberty by a court order or following a sentence for a criminal offence may be placed in either SDKK or the Judicial Youth Institute Curaçao (*Justitiële Jeugd Inrichting Curaçao* or JJIC[95]).[96] The CPT considers that juveniles should not be held in prison but in a facility designed to meet their specific needs. In this respect, SDKK is totally inappropriate for holding juveniles (see also paragraph 155).

191. The JJIC is an educational and correctional institute for young people. At the time of the visit, it consisted of a campus area with several open departments, located at the Kaya Brudernan di Dongen, and a closed department, at the Rembrandtstraat, next to the drug rehabilitation centre of the Brasami Foundation. The delegation focused on the closed department which was accommodating eight juveniles for an official capacity of twelve places. However, as two cells were out of order the actual capacity was eight.

192. Juveniles can be sentenced to placement in the closed department of JJIC on the basis of Section 7 of Title X of the 2011 Criminal Code of Curaçao, placement in a youth institution (*Plaatsing in een inrichting voor jeugdigen* or Pij). Article 1:165 sets the duration of juvenile detention at a maximum of twelve months for children aged 12 to 16. For children between 16 and 18, the maximum is 24 months, and 4 years in case of crimes that carry a sentence of twenty-four years or life.[97]Article 1:166 provides that a sentence of juvenile detention shall be enforced in a separate facility for juvenile detention. If the juvenile has become an adult before the start of his sentence, he/she shall be placed in a regular prison instead. At the time of the visit, three juveniles at JJIC continued to be detained under the old TBR (placement at the disposal of the government) measure, which no longer exists in the new Criminal Code.

193. At the time of the visit, a discrete closed department with eight new single-occupancy cells located next to the open JJIC departments was being built to provide better material conditions for juvenile offenders. More importantly, however, this facility should function with a child-centred approach, based upon working intensively with the juveniles to provide them with the necessary skills to reintegrate into society upon release.

---

95 Previously *Gouvernements Opvoedingsgesticht* or GOG.

96 Juveniles with a severe drug addiction could also be ordered to undergo addiction treatment at the Brasami Foundation. This facility, however, was not visited by the CPT's delegation.

97 There are no special provisions for young adults aged between 18 and 24; they are sentenced as adults, while in theory all undergoing a special regime within the JoVo section at SDKK. In practice, however, this regime is not always fully in place.

The delegation was also informed of plans to construct a whole new juvenile detention facility at the campus location, envisaging a total of 98 beds, with the creation of a capacity of 24 places in the initial phase. While welcoming the conceptual approach, the CPT would question the need for so many places for juvenile offenders given existing numbers were around 10. Once such a facility is built, the temptation will be to fill the whole unit, placing an overemphasis on detention of juveniles. This would be in contradiction to one of the cardinal principles enshrined in the United Nations Convention on the Rights of the Child[98] and in the European Rules for juvenile offenders[99] that juveniles should only be deprived of their liberty as a last resort and for the shortest possible period of time.[100]

The CPT would appreciate the comments of the Curaçao authorities on this matter.

194. At the outset, it should be noted that the delegation did not hear any allegations of physical ill-treatment by staff at JJIC. Some juveniles, however, did allege verbally aggressive behaviour by security staff.

The CPT recommends that the Curaçao authorities deliver the clear message to staff at JJIC that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of sanctions.

2. Conditions of detention

195. Material conditions at the Rembrandtstraat building were not good. The six double-occupancy cells (measuring some 20 m² and equipped with a bed and some shelves) were in a poor state of repair. The cells had limited access to natural light and poor ventilation and suffered frequent sewage and sanitary problems. The cells were sombre and smelly, the flush on the toilet did not work, and the mattresses were filthy. The exercise yard was covered, and young persons had no view of the sky and limited access to natural light.

196. The delegation was particularly concerned by the regime in place at JJIC. Hypothetical schedules with activities including education, sports and recreation existed. However, the juveniles all complained of the complete lack of purposeful activities, stating they would at most have one hour of education per week and one music class. The sports field was not in use, as it was considered an escape risk.

---

98 See articles 3 and 37.b of the United Nations Convention on the Rights of the Child.

99 See rules 5 and 10 of the European Rules for juvenile offenders subject to sanctions or measures (Recommendation CM/Rec(2008)11).

100 See also the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules”), the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“Havana Rules”) and the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency (“Riyadh Guidelines”).

It appeared that lack of staff, security concerns and limited resources often resulted in activities being cancelled. Furthermore, when juveniles are placed at JJIC they first needed to be assessed and were not allowed out of their cells during the first month. Afterwards, they were progressively allowed more time outdoors, up to five hours per day.

The state of affairs at the closed department of the juvenile judicial institute was totally unacceptable at the time of the visit (see paragraph 201). Children who have been deprived of their liberty should be provided with an extensive programme of activities (education, vocational, recreational and sports) for at least eight hours a day with an individual sentence plan drawn up and reviewed on a regular basis, with the involvement of the child. They should also be accommodated in appropriate material conditions.

3. Staff

197. The custody and care of juveniles deprived of their liberty is a particularly challenging task. The staff called upon to fulfil that task should be carefully selected for their personal maturity and ability to cope with the challenges of working with - and safeguarding the welfare of - this age group. More particularly, they should be committed to working with young people, and be capable of guiding and motivating the juveniles in their charge. All such staff, including those with purely custodial duties, should receive professional training, both during induction and on an ongoing basis, and benefit from appropriate external support and supervision in the exercise of their duties.

Security staff inside JJIC were deployed from the prison, whereas private security guards were responsible for perimeter security. None of these guards had undergone any special training to deal with juveniles. Six full-time teachers and two social workers are employed at JJIC, but they are also responsible for working with children in the open sections.

The CPT recommends that all staff working with juveniles receive specific training for working with juveniles in the light of the above remarks.

4. Health care

198. There were no medical staff based at JJIC. Doctors and nurses from SDKK were responsible for the health care, visiting only when necessary, while a psychologist visits JJIC for three hours a week.

The CPT recommends that someone qualified to provide first aid should always be present at the establishment, including at night.

199. Prompt medical screening of newly admitted juveniles is essential to prevent the spread of transmissible diseases and for recording injuries in good time (see also paragraph 167). Medical screening can also be used to identify mental illness, addictions and dietary needs. Juveniles arriving to JJIC do not undergo any medical screening. A doctor or nurse is only called in when this is deemed necessary.

The CPT recommends that every newly admitted juvenile be properly interviewed and physically examined by a medical doctor (or by a fully qualified nurse reporting to a doctor) as soon as possible after his or her admission; save for exceptional circumstances, the interview and examination should be carried out within 24 hours.

5. Other issues

200. Possible disciplinary sanctions included confinement to the juvenile's own cell or to the disciplinary cell (number four). The cell measured 8 m² and was equipped with a set of double bunk beds. It was dirty and dark, with very limited access to natural light and poor ventilation. The maximum placement in the disciplinary cell was three days which, according to the juveniles, was not exceptional. This was not an appropriate place to hold juveniles.

The CPT has very strong reservations as concerns any form of solitary confinement of juveniles as this can compromise their physical and/or mental integrity. To this end, it considers that a juvenile should never be placed in solitary confinement for disciplinary purposes for a period exceeding three days, and preferably for period not lasting more than a few hours.[101]

The delegation further noted a lack of safeguards for the punishment of juveniles, notably when they are placed in the isolation cell. There were no procedures in place governing such a placement; the measure appeared to be arbitrarily applied and for punitive reasons with no proper disciplinary process and no proper recording of the measure in a dedicated register. This is unacceptable.

The delegation was also informed that due to the lack of specialised training for the staff, the police were called in on occasion to re-establish order. **Such a practice should be ended.**

The CPT recommends that clear guidelines be developed regarding disciplinary sanctions, ensuring a minimal resort to the punishment of solitary confinement. Further, safeguards should be put in place as well as a recording system which can be used to monitor the application of sanctions.

201. Had it not been for the fact that a new establishment was close to being opened, with the promise of a new regime and approach, the delegation would have recommended the immediate closure of the Rembrandtstraat unit. By letter of 24 September 2014, the Curaçao authorities confirmed that the new unit became operational on 28 August 2014 and that the facility at the Rembrandtstraat is no longer being used for the detention of children. Further, information is provided on the increased opportunities for education, work, recreation and outdoor exercise. The CPT welcomes this development **and would like to receive information on the operation of the new unit at the Incastraat, including information on staffing and weekly activities**.

---

[101] See the 18th General Report on the CPT's activities – CPT/Inf (2008) 25, paragraph 26.

D. Illegalen Barakken Immigration Detention Facility

202. Foreign nationals held under aliens legislation in Curaçao are detained at Illegalen Barakken, an immigration detention facility located right next to SDKK. Their detention can be ordered, by an inspector of the Curaçao Police Force, responsible for immigration cases. Detention is ordered only in combination with an expulsion order, which may be appealed. Responsibility for the accommodation and care of immigration detainees was fully transferred from the police to SDKK in 2012.

203. There are no specific regulations governing the detention of irregular migrants, resulting in a very basic and restrictive regime at Illegalen Barakken. There appeared to be no legal maximum period of immigration detention. While the vast majority of detainees only spends up to three days in detention, complications with identity documents or inability to pay for a flight ticket could lead to detention of several months. The delegation was informed that if a person remained unable to afford a flight ticket after approximately five months, the State would pay for the ticket to enable deportation.

The CPT recommends that specific regulations be developed which are appropriate for the detention of irregular migrants. Such regulations should include a maximum period of detention. Further, if the only reason of failure to deport is the lack of funds for an airfare, the CPT recommends that the State provide these funds much earlier in the process.

204. Immigration detainees should - in the same way as other categories of persons deprived of their liberty - be entitled, as from the outset of their deprivation of liberty, to inform a person of their choice of their situation and to have access to a lawyer and a medical doctor. Further, immigration detainees should be expressly informed, without delay and in a language they understand, of all their rights and the procedure applicable to them. These rights were generally respected. However, the CPT's delegation did note some shortcomings.

Immigration detainees had a right to inform a person of their choice of their detention, but in principle they had to make this call at their own cost. If they did not have money for a phone card, they would have to depend on the kindness of a staff member to assist them in this regard. Detainees had a right to consult a lawyer at any stage of the proceedings against them, but they had no access to free legal aid. Further, while most staff members spoke Spanish (the language of the majority of immigration detainees in Curaçao), communication problems could arise when other languages were needed. The delegation observed that efforts were being made by staff to explain rights and procedures in a language that could be understood. However, written documentation, such as the detention and deportation warrants, was only available in Dutch.

In the CPT's view irregular migrants should benefit from an effective legal remedy enabling them to have the lawfulness of their deprivation of liberty decided speedily by a judicial body. This judicial review should entail an oral hearing with legal assistance, provided free of charge for persons without sufficient means, and interpretation (if required).

The CPT recommends that the Curaçao authorities introduce such a legal remedy.

Further, the CPT recommends that the right to inform a person of choice be guaranteed and that provision be made that costs of this notification are covered by the State.

In addition, all immigration detainees should be expressly informed of their rights and the procedure applicable to them in a language they can understand. They should be systematically provided with a document setting out this information; the document should be available in the languages most commonly spoken by those concerned and, if necessary, the services of an interpreter should be made available.

205. The premises consisted of three parts; one for the detention of men, one for women and one for staff and administration. The detention block for men comprised a multi-occupancy dormitory room (60 m²) with 12 beds and a recreation room, divided by the bathroom. The women's building had a dormitory with 14 beds and a bathroom. The buildings and sanitary facilities were in a good state of repair and had sufficient access to natural light and adequate ventilation. The delegation found that material conditions had improved considerably since the 2007 visit and could generally be considered as adequate.[102]

206. There was, however, a general lack of purposeful activity in the facility. The male ward had a recreation room with a television, dominoes and some fitness equipment but this room was locked overnight. The female ward had a television in the dormitory itself. There was a possibility to play ball games in the fenced area used for outdoor exercise.

For short stays of up to three days, which, as noted above, is the case for the vast majority of persons held at the Illegalen Barakken, the regime could be considered as acceptable. However, in respect of persons who have to stay longer, additional measures need to be taken to offer some purposeful activities (educational, recreational or vocational).

The CPT recommends that the Curaçao authorities develop a range of purposeful activities for detained persons at Illegalen Barakken. The longer the period for which persons are detained, the more developed should be the activities which are offered to them.

207. The prison staff employed at the facility had not received specific training to deal with the particular needs of foreign nationals detained under aliens legislation and played a merely supervisory role. It should be noted, however, that the delegation had a positive impression of the manager of Illegalen Barakken who appeared to be making a genuine effort to ensure adequate conditions of detention for all detainees.[103]

The CPT recommends that staff be selected and trained for the specific purpose of working with irregular migrants.[104]

---

102 See the report on the 2007 visit (CPT/Inf (2008) 2), Part 3, paragraphs 7, 32 and 33.

103 For example, the manager had informed the CPT delegation that he had drafted new regulations to ensure a clear and more appropriate framework for immigration detention.

104 See also the report on the 2007 visit (CPT/Inf (2008) 2), Part 3, paragraph 34.

208. When a detainee at Illegalen Barakken is in need of medical care, he or she will be seen by medical staff from SDKK. There were no regular visits or check-ups performed by medical staff. The persons interviewed indicated that they had not undergone any medical screening upon admission.

The CPT recommends that systematic medical screening of all immigration detainees, including for transmissible diseases, be introduced. Such screening should be carried out in a way that respects medical confidentiality (see also paragraph 167).

209. Contact with the outside world was limited, as visits were not allowed. Staff indicated that exceptions were made for detainees who stay longer than a month. Detainees had access to the phone during the hours they were allowed outside their cells. The costs, however, had to be covered by detainees themselves.

The CPT recommends that all immigration detainees be granted the right to receive visitors, in particular relatives and representatives of relevant organisations, throughout the period of their detention.

E. Klínika Capriles Psychiatric Institution

1. Preliminary remarks

210. Klínika Capriles, located in Willemstad, is the only psychiatric hospital on the island and since 2010 exists as a foundation completely independent of the State. The hospital had 199 beds spread across a series of recently built units within a large campus area. The majority of patients were accommodated in the three Mediumstay units (52 beds), the two Longstay units Esmeralda and Margriet (40 beds) and the Klas Florisol (chronic) unit (54 beds). Involuntary patients were placed in the 21-bed Pico Plata unit and in the 32-bed Shortstay unit. There was also a day clinic.

211. The management of Klínika Capriles intended to remove all fencing from around the clinic and, in this respect, acknowledged that the Pico Plata unit was not designed to accommodate particularly dangerous forensic psychiatric patients. Indeed, the CPT's delegation was informed that perhaps the FOBA at SDDK would have to transform a section into a proper psychiatric in-patient department.

The CPT considers that persons requiring psychiatric assessment and/or treatment, whatever their status, should be assessed and/or treated in a medical facility. At present, the FOBA cannot be considered as a medical facility.

The CPT would like to be informed about the intentions of the Curaçao authorities with regard to the placement of forensic psychiatric patients in the future.

212. The CPT's delegation undertook a targeted visit to the closed Pico Plata unit where substance abusers and mentally incapacitated offenders were accommodated. At the time of the visit, there were 17 patients. It also had an opportunity to tour the whole campus and to visit the short-stay admissions unit.

At the outset, the CPT wishes to state that in the units visited, the delegation noted a caring and supportive approach by staff towards patients.

2. Patients' living conditions and treatment

213. The Pico Plata unit consists of a single-storey L-shaped building looking out onto an enclosed courtyard with a high wall. The building was in a state of disrepair and decay with problems of damp walls and crumbling ceilings. The three accommodation units each consisted of two small dormitories containing three beds, each with its own sanitary annexe (toilet and shower; a couple of the showers lacked curtains), and a common kitchen/dining room area between the two dormitories. The dormitories were suitably equipped (bed, personal cupboard, bedside table) but rather shabby and provided little personal space; it would be preferable that the dormitories accommodate no more than two patients each. The units were all clean. The double- and single-occupancy rooms were in a similar state.

However, in comparison to the recently-built short-stay unit where all patients had their own room, with sanitary annexe, good access to natural light and sufficient ventilation, the conditions in Pico Plata could be described as poor.

The CPT recommends that steps be taken to improve the living conditions of patients accommodated in the Pico Plata unit, in the light of the above remarks. It would be preferable that accommodation of a similar standard to that available for short-stay patients be provided for Pico Plata patients.

214. As for treatment, each patient had an individual care plan drawn up which was reviewed on a weekly basis by a psychiatrist and adapted to the patient's needs, with specific goals and planned interventions. A broad range of treatment was offered, including pharmacotherapy, individual and group psychotherapy, occupational therapy (art, music), group sessions and a range of activities. Patients had access to the enclosed garden area, which was equipped with benches, for much of the day.

The possibility for PRN medication[105] to be administered to patients was noted by the psychiatrist in some of the medical files. However, it had not been applied in respect of the patients in Pico Plata.

3. Staff

215. The hospital had some 250 staff members, including 141 nurses, 17 occupational therapists, six psychotherapists, four psychiatrists and a general practitioner. The Pico Plata unit was staffed by five nurses from 7 a.m. to 3 p.m., three nurses from 3 p.m. to 11 p.m. and one nurse between 11 p.m. and 7 a.m. A unit coordinator (trained psychiatric nurse) was present each weekday. There was also a guard on duty at all times who could speak to patients but was only authorised to use physical force upon the explicit instruction of a nurse. A psychiatrist visited the unit some eight hours a week and a psychologist ten hours, and the psychiatrist was on call 24 hours a day.

The CPT recommends that the staffing levels on the Pico Plata unit be reviewed; in particular the presence of the psychiatrist and of the psychologist should be increased.

4. Seclusion and means of restraint

216. Mechanical means of restraint were not applied at Klínika Capriles. If nurses were unable to calm an agitated patient through de-escalation techniques, resort to manual restraint or seclusion was possible. Further, medication for rapid tranquillisation was used. In all cases the resort to means of restraint and seclusion was reported to a doctor. In the case of seclusion, the delegation was informed that the mean time for the measure in 2013 had been 28 hours. During the first four months of 2014, there had been 22 cases, the longest of which lasted some 66 hours while 16 lasted less than 24 hours. However, very few cases concerned patients from the Pico Plata unit.

---

105 "PRN" stands for *pro re nata*, a Latin expression for "as the circumstance arises" referring to open-ended prescriptions made by treating doctors, for drugs not administered immediately, or on an on-going basis, but whenever the nursing staff believe it to be necessary.

The seclusion room in Pico Plata was not appropriate for placing patients for extended periods and was only used for short time-outs. In each case, the doctor would be informed and the measure noted in the individual medical record. If a measure of seclusion was considered necessary for a patient from Pico Plata, he would be taken to the recently built admission unit which possessed two isolation rooms. Each room was under CCTV and audio surveillance and a nurse visited and talked to the patient every 30 minutes. Each patient was provided with rip-proof clothing and a blanket. At the end of the period of seclusion, a debriefing would take place. For every instance of isolation, the measure was recorded in the patient's medical file (the time at which the measure began and ended; the circumstances of the case; the reasons for resorting to the measure; the name of the doctor who ordered or approved it; whether the measure was part of a treatment plan), and a central computerised record was also maintained.

The CPT would like to receive a copy of the Klínika Capriles' policy on restraint, including on issues associated with restraint, such as staff training, complaints policy, reporting mechanisms and debriefing.

Further, the CPT would like to receive confirmation that a measure of seclusion is always ordered by a doctor and that only in emergency situations is the measure applied by nursing staff and a doctor subsequently informed.

5. Safeguards

a. the initial placement decision and discharge

217. The procedure by which involuntary placement is decided should offer guarantees of independence and impartiality as well as of objective medical expertise. Leaving aside emergency cases, the formal decision to place a person in a psychiatric hospital should always be based on the opinion of at least one doctor with psychiatric qualifications, and preferably two, and the actual placement decision should be taken by a different body from the one that recommended it. Further, a patient must have the right to appeal the measure to a court or mental health tribunal, which should see the patient before deciding on the involuntary placement measure if this is possible and not detrimental to the person's health. The patient should also be entitled to legal assistance in such proceedings. Where the patient does not appear before the judge, he or she should normally be represented by a person acting in his or her interests.

218. The involuntary placement procedure at Klínika Capriles is regulated by Section 4 of the 28 May 2010 Netherlands Antilles National Ordinance concerning the placement and care of patients. According to the law, the Minister of Health may authorise an involuntary placement at the request of a family member or guardian and based upon the statement of a psychiatrist or a doctor, but not the person's treating doctor, which should have been drawn up within the previous three days. The Minister of Health should as far as is possible hear the person concerned as well as a family member or guardian. The Minister of Health's order for involuntary placement is communicated to the prosecutor's office, which must file a request with the court within five weeks for a continued involuntary placement for a period not exceeding one year. The prosecutor includes the daily observation medical entries of the patient for the first four weeks of hospitalisation, as well as the statement of the treating psychiatrist. The judge should hear the patient[106] and may also hear from other persons working in the hospital. Further extensions of involuntary placement for periods of one year are made by the Court upon request of the prosecutor and supported by a statement from the treating psychiatrist. The intention of the management of Klínika Capriles had been to recruit a non-treating psychiatrist to be responsible for evaluations. The law did not provide for a right to legal assistance for patients subjected to involuntary placement.

Discharge is decided by the Board of the hospital at the request of the patient or of the family or guardian, or upon a written statement of the psychiatrist. If a request for discharge is rejected, the patient may appeal to the Court.

The above-mentioned procedures fall short of providing adequate safeguards for patients subject to a measure of involuntary placement, notably as regards legal assistance.

The CPT recommends that the Curaçao authorities review the procedures for involuntary placement at Klínika Capriles or any other psychiatric hospital in order to meet the standards set out in paragraph 217 above.

More particularly, **steps should be taken to ensure that:**

- **involuntary placement orders should always be based on the opinion of at least one doctor with psychiatric qualifications, and preferably two; the need for such placements should be reviewed at regular intervals (i.e. initially no longer than every three months);**
- **a court should seek an opinion from a psychiatrist outside the hospital concerned in the context of involuntary placement decisions or extensions thereof;**
- **patients who are admitted to a psychiatric hospital on an involuntary basis have the effective right to appeal the measure;**
- **the patient concerned receives a copy of any decision on involuntary placement and is informed in writing about the reasons for the decision and the avenues/deadlines for lodging an appeal;**
- **a patient is entitled to legal assistance in the context of involuntary placement decisions.**

---

106 The hearing may take place in the hospital and it is for the judge to decide whether the patient is fit to be heard or not.

b. safeguards during placement

219. At the Klínika Capriles, the involuntary admission of a patient was considered to provide the authorisation to administer compulsory treatment.

The CPT has fundamental objections to such an approach. The Committee considers that patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorising treatment without his or her consent. It follows that every patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.

Of course, consent to treatment can only be qualified as free and informed if it is based on full, accurate and comprehensible information about the patient's condition and the treatment proposed. Consequently, all patients should be provided systematically with relevant information about their condition and the treatment which it is proposed to prescribe for them. Relevant information (results, etc.) should also be provided following treatment.

The CPT recommends that the Curaçao authorities take the necessary steps to recognise the principle of free and informed consent to treatment, in the light of the above remarks.

220. All patients were provided with a Patient’s Rights Brochure upon admission to Klínika Capriles. The policy of the hospital was to move away from ward rules to a focus on the rights of patients. The brochure provided, for example, the following rights:

- *The right to quality treatment and care,* respecting personal dignity and right to self determination.
- *The right to a treatment plan*, prepared by the caregiver to the extent possible together with the patient, immediately after admission.
- *The right to information and participation in the preparation of the treatment plan.*
- *The right to a file and access to the file*. To the extent permitted by law, the patient has the right to demand that the file or parts of the file be destroyed.
- *The right to confidentiality*. In case of involuntary admission, information is provided to the legal representative.
- *The rights in case of measures*. Specific measures should end as soon as the danger has passed. In cases which occur more or less regularly, the measures to be applied will be specified in the treatment plan. The measures are: isolation (locked regular room), separation (special room), fixation to seat or bed, medication, administration of food and liquids.
- *The right to move freely*. In case of involuntary admission, this is limited to the hospital premises.
- *The right to contact with the outside world.*
- *The right to discuss the case with the patient counsellor who may assist in defending the patient’s rights.*

Patients met by the delegation had been advised of their rights in a language they could understand. The CPT endorses such a rights-based approach towards patients.

221. The maintenance of contact with the outside world is essential, not only for the prevention of ill-treatment but also from a therapeutic standpoint. The delegation noted that patients could send and receive correspondence, have access to the telephone, and receive visits from their family and friends.

222. The possibility for patients to address complaints to independent external monitoring bodies remains a cornerstone of the basic rights of any involuntarily admitted psychiatric patient.

At Klínika Capriles, the management encouraged patients to resolve their complaints within their units but complaints could also be filed with the Complaints Committee which was independent of the clinic and offered complaint receipt, mediation and resolution to several health-care organisations. It had at least four members and investigated and ruled on the merits of a complaint; it could also issue recommendations on measures to be taken. The Committee's recommendations are not binding but are generally followed.

Complaints are submitted in writing to the Director's secretary and forwarded to the Committee within 24 hours. The CPT considers that complaints should be forwarded to the Complaints Committee by an independent person such as the patient's counsellor. However, at the time of the visit, no patient counsellor was in post.

The CPT recommends that complaints boxes be installed in each ward. Further, it would like to be informed whether a patient's counsellor has been appointed and to receive information on the number, nature and outcome of the complaints made by involuntarily placed patients for the years 2013 and 2014.

SINT MAARTEN

A. Police

1. Preliminary remarks

223. Further to the recent constitutional changes of 2010, criminal legislation on Sint Maarten is in a period of transition. A new criminal code was adopted in December 2012 and a draft Caribbean Criminal Procedure Code was presented to the respective Ministers of Justice of Aruba, Curaçao, Sint Maarten and the Netherlands in November 2013 and is pending adoption. Once adopted, this Code should apply on all islands of the Caribbean part of the Kingdom of the Netherlands. In the meantime, the Code of Criminal Procedure (CCP) in force on Sint Maarten remains the old Netherlands Antilles CCP of 1996.[107] The legal framework governing the detention of criminal suspects by the police has therefore basically remained unchanged since the CPT's 2002 visit.

In short, persons suspected of having committed a criminal offence may be held by the police for questioning for a maximum of six hours.[108] Thereafter, if the needs of the investigation so require, the person may be placed in police custody for a maximum period of two days (*inverzekeringstelling*), on the decision of a prosecutor or of an assistant prosecutor[109] reporting to the prosecutor in writing or orally as soon as possible and within 24 hours.[110] Police custody may be further extended by the prosecutor for an additional maximum period of eight days.[111] However, the suspect must be brought before the investigating judge as soon as possible - and within 24 hours - after the beginning of such an extension in order to decide on its lawfulness.[112] Thus the legal maximum period before a person deprived of his/her liberty is brought before a judge amounts to three days and 16 hours.

Thereafter, a person may be placed in remand detention (*voorlopige hechtenis*) as regulated in Title VIII of the CCP. A maximum of eight days of custody (*bewaring*) may be ordered by the investigating judge, renewable once.[113] This detention, however, as well as any further remand custody (*gevangenhouding en gevangenneming*),[114] should take place at a remand facility under the responsibility of the head of that facility; that is, at Point Blanche Prison.[115]

The CPT considers that a person should be kept in police custody for the shortest amount of time possible, preferably less than 24 hours. **To this end, it recommends that the Sint Maarten authorities amend the draft CCP accordingly.**

---

107 The *Wetboek van Strafvordering* (P.B. 1996, no. 164) entered into force in 1996.

108 Article 80(1) CCP. This article also provides that persons may not be questioned between 10 p.m. and 8 a.m. Therefore this initial period may in fact last up to 16 hours.

109 In Dutch, a *hulpofficier van justitie*, who can also be a senior police officer.

110 Article 83 CCP, paragraphs 1 and 4, and Article 87(1).

111 Article 87(2) CCP.

112 Article 89(1) CCP.

113 See Articles 92(1) and 93 CCP.

114 See Articles 95to 99 CCP.

115 See Articles 94(4) and 99 CCP.

2. Ill-treatment

224. Most persons met by the CPT's delegation stated that they had been treated correctly at the time of apprehension. However, a few allegations of ill-treatment by police officers, including of juveniles, were received which consisted primarily of punches and kicks to the body. For example, a person who was apprehended on 4 April 2014 in St Peter's stated that he was punched three times in the stomach by police officers with his hands cuffed behind his back apparently because they thought he was lying. Some allegations of excessive use of force at the time of apprehension were also received, including kicks to the legs and body after the person had been handcuffed and was lying prone on the ground. Complaints about tight handcuffing were also heard.

The CPT recommends that senior police officers remind their subordinates at regular intervals that ill-treatment is not acceptable and will be punished accordingly.

The Committee further recommends that police officers be regularly reminded, through training and instructions, that no more force than is reasonably necessary should be used when effecting an apprehension. In particular, police officers must be trained in preventing and minimising violence in the context of an apprehension. For cases in which the use of force nevertheless becomes necessary, police officers need to be able to apply professional techniques which minimise any risk of harm to the persons whom they are seeking to apprehend.

225. **The CPT would also like to receive for the years 2010-2014:**

- **data on the number of complaints lodged of ill-treatment by police officers and the number of criminal/disciplinary proceedings initiated as a result of those complaints;**
- **information on the outcome of proceedings and an account of criminal/disciplinary sanctions imposed following complaints of ill-treatment.**

3. Safeguards against ill-treatment

226. The CPT attaches particular importance to the right of persons deprived of their liberty to inform a close relative or another person of their choice of their situation; the right of access to a lawyer; and the right of access to a doctor. These rights should apply from the very outset of the person's deprivation of liberty, i.e. as from the moment when the person is obliged to remain with the police. Persons should also be adequately informed of the possibility to avail themselves of these rights, and it should be possible to verify the application of these safeguards by consulting police custody records.

227. Many persons met by the delegation, notably foreign nationals, alleged that they had not been able to <u>inform a third person of their detention</u> during the first few days of detention following their apprehension by the police. It was not possible to verify any records as to whether the police had notified a third person but it appeared that detained persons were not provided with feedback if a third party was contacted.

The CPT recommends that the Sint Maarten authorities ensure that all persons deprived of their liberty by the police, for whatever reason, are granted the right to notify a close relative or third party of their choice about their situation as from the very outset of their deprivation of liberty. The exercise of this right could be made subject to certain exceptions designed to protect the legitimate interests of the police investigation, provided those exceptions are clearly circumscribed in law and made subject to appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the specific reasons therefor and to require the approval of a senior police officer unconnected with the case at hand or a public prosecutor).

228. Article 48 of the CCP provides for the right of access to a lawyer for persons apprehended by the police. Further, following the *Salduz* judgment of the European Court of Human Rights of 27 November 2008 and a judgment of the Supreme Court[116] based upon it, the Public Prosecution Service announced a new policy on the presence of a lawyer during interviews. Consequently, all persons apprehended must be now informed by an investigating officer, prior to the first interview, of his or her right to consult a lawyer before the interview. The lawyer of the suspect's choice – or otherwise the duty lawyer – must be telephoned either by the reporting officer who arrested the suspect or by the assistant public prosecutor before whom the suspect was brought after his arrest. This is a positive development.

However, it would appear that in numerous cases detained persons were presented with a waiver form to sign declaring that they did not wish to have access to a lawyer before the first police interview. Persons met by the delegation stated that they were unsure what they were signing and many thought it was the form about their right to a lawyer. Indeed, many persons had only been able to contact a lawyer once they were taken before a judge concerning the extension of their detention period (i.e. after two days).

The delegation also met two juveniles who stated that they had not had a lawyer or person of trust present when they had been interviewed for the first time by the police.

One reason presented to the CPT for the delay in access to a lawyer was that legal aid for detained persons was only applicable from the moment that persons were brought before a judge to have their detention extended (i.e. after two to three days). This deficiency should be remedied.

The CPT recommends that the Sint Maarten authorities take the necessary steps to ensure that all persons are afforded the right of access to a lawyer in practice as from the outset of their deprivation of liberty. Such a right should include access to an ex officio lawyer if required.

---

116 Judgment of 30 June 2009; reference LJN: BH3079.

229. Access to a doctor is not a right provided for in the CCP and the Police Code of Conduct (Article 17) only places a duty on police officers to consult with a doctor if necessary. Nevertheless, in practice, persons detained at Philipsburg Police Station could request access to a doctor or a nurse who were on call 24 hours a day. Further, it appeared that the nurse visiting sentenced prisoners every day could also examine police detainees. However, there was no screening of detained persons and requests to see a doctor were not always followed up promptly. For example, the delegation met an elderly man who appeared to have suffered a broken finger at the time of his arrest some 10 days prior to the delegation's visit and who had still not been seen by a doctor or a nurse.

The CPT recommends that persons deprived of their liberty by the police be expressly guaranteed the right of access to a doctor from the very outset of deprivation of liberty.

The relevant provisions should make it clear that:

- **a request by a detained person to see a doctor should always be granted; it is not for police officers, nor for any other authority, to filter such requests;**
- **a person taken into police custody has the right to be examined, if he so wishes, by a doctor of his own choice, in addition to any medical examination carried out by a doctor called by the police (it being understood that an examination by a doctor of the detained person's own choice may be carried out at his own expense);**
- **all medical examinations should be conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police staff;**
- **the results of every examination, as well as any relevant statements by the detained person and the doctor's conclusions, should be formally recorded by the doctor and made available to the detainee and his lawyer;**
- **the confidentiality of medical data should be strictly observed, without prejudice to the right of the person concerned to make reference to that medical data;**
- **the exercise of the right of access to a doctor should be recorded in the custody records.**

Further, all persons remanded at Philipsburg Police Station should undergo a proper medical assessment for as long as it is used as a remand facility.

4. Philipsburg Police Station

230. Since the 2002 visit, a new police detention facility has been constructed at the back of the police station. The facility consists of 12 cells with an official capacity of 26 places.

At the time of the visit, the detention facility was under the operational responsibility of Point Blanche Prison, staffed by four prison officers during the day (7 a.m. to 7 p.m.) and three prison officers at night. All persons held by the police for more than a few hours would be transferred to this facility. However, the facility was also being used to hold remand and sentenced prisoners due to the overcrowding and ongoing renovations at Point Blanche Prison. When the delegation visited the facility, it was holding seven persons considered to be under police custody (i.e. who had been detained for less than 10 days since their apprehension), three juveniles and 16 prisoners. Numbers often exceeded the official capacity; for example, there had been 31 persons held the night prior to the delegation's visit.

231. The conditions of detention were extremely poor. The cell area was dark and dank; cells had little access to natural light and the artificial lighting in the corridors was insufficient for reading purposes; there was inadequate ventilation and many of the sanitary annexes in the cells emitted a foul smell. In several cells, there was leakage from the sanitary annexes, which were not fully partitioned from the rest of the cell. In the larger cells (16 m²) there were two sets of bunk beds for four persons but it was quite usual for an additional two or three persons to be kept overnight in these cells, sleeping on a mattress on the floor. Many of the mattresses were dirty and worn, or consisted of broken pieces of foam held together by a sheet. Moreover, during the first 10 days of detention (the period considered as police custody) staff confirmed that detained persons were not provided with sheets, a pillow or a towel. A number of persons displayed rashes all over their bodies. There were also no call bells in the cells which meant that detained persons had to shout repeatedly to attract the attention of staff, often resulting in terse exchanges.

The situation was exacerbated by the fact that there was no regime in place. Sentenced inmates were offered two periods of up to one hour each in a courtyard and those in police custody up to one hour. There were no other activities and no access to television or radio.

Some people had been held in these conditions for several months.

The CPT recommends that urgent steps be taken to improve the conditions of detention at Philipsburg Police Station, in particular:

- **all detained persons should be provided with at least 4 m² of living space per person in multi-occupancy cells;**
- **all detained persons should be provided with their own bed;**
- **all detained persons should be provided with a sheet, pillow and towel from the moment they are accommodated in this facility, as well as with hygiene products and cleaning materials for the cell;**
- **ventilation and access to natural light should be improved;**
- **all sanitary annexes should be partitioned up to the ceiling and leaking toilets and pipes repaired;**
- **all cells should be equipped with a call bell.**

Moreover, the CPT recommends that persons should not be detained at Philipsburg Police Station in excess of three days and in any event never longer than 10 days. The facility is totally inappropriate for holding remand and sentenced prisoners, and the CPT recommends that they be moved to alternative accommodation as soon as possible.

5. Juveniles in detention

232. At the time of the visit, three juveniles were being held in two cells at Philipsburg Police Station. One juvenile had spent 56 days in a cell on his own and another some 20 days before the third juvenile had arrived a few days prior to the visit. They were provided with maths and English classes each morning, although the teacher did not always turn up, and were offered outdoor exercise twice a day. They were also brought to the gym at Point Blanche once a week, although they found this rather uncomfortable as the older prisoners tried to supply them with marihuana. Otherwise, they were confined to their cells for 20 hours a day.

The conditions of detention at Philipsburg Police Station were totally inappropriate for juveniles. The CPT recommends that alternative arrangements be made to hold juveniles in appropriate accommodation whenever it is considered necessary to deprive a juvenile of his or her liberty.

233. The authorities of Sint Maarten were aware of the need to change this state of affairs. The delegation was informed of plans to build a small dedicated unit for the detention of up to 20 boys, in two separate sections, one for civil order and one for criminal law offences. The plans appeared to be well thought through, with an emphasis on creating a safe environment and rehabilitation through providing a full regime of sports, education and vocational activities. Special attention was also being taken to recruit the right mix of staff. The CPT welcomes this approach with the proviso that every effort should be made to avoid the temptation to fill the unit, especially given that there were only a few juveniles in detention in Sint Maarten at the time of the visit.

The delegation was also informed that the intention was to construct a child-friendly three-cell unit at Philipsburg Station for juveniles which would be separated from the adult area. Juveniles would be kept in this unit for the first 10 days of their detention and afterwards transferred to the new dedicated juvenile detention unit. The Committee is far more reticent about this project as it considers that children should not be held overnight in police stations. It would be far preferable for children deprived of their liberty as a last resort to be held in a place commensurate with their needs. To this end, it would be preferable that they be accommodated without further delay in the new children's detention unit, where the facilities and staffing will be specifically designed for accommodating juveniles.

The CPT would welcome the observations of the Sint Maarten authorities on this matter. Further, it would like to be informed of the number of juveniles being held in detention at Philipsburg Police Station and/or the new children's detention unit, for the period from October 2014 to April 2015.

B. Point Blanche Prison

1. Preliminary remarks

234. Point Blanche Prison, accessible only by an extremely steep and narrow concrete road, is located on a secluded hilltop in the outskirts of Philipsburg. The prison, built in the 1990s, is designed on the Panopticon model, although there was a disjuncture between the central observation room and the four accommodation wings (eight spurs) which meant that staff could not properly see what prisoners were doing.[117] There was a separate small unit for female prisoners.

The prison had a capacity of 134 places: 120 for male and 14 for female prisoners. However, at the time of the visit, the establishment was in the process of undergoing extensive renovations which meant that the female section was closed and the eight spurs of the male accommodation block were being upgraded one at a time. As a consequence, the prison was holding 110 male prisoners. However, an additional 58 prisoners (including 11 women and three juveniles) were being held at Philipsburg Police Station and at Simpson Bay Remand Centre, both of which were staffed by prison officers and under the operational management of Point Blanche Prison.

All categories of male and female prisoners were held in the prison: convicted prisoners serving long and short sentences, remand prisoners and young offenders.

235. In the course of the visit, the delegation was appraised of plans to build two additional floors on top of the existing accommodation block. The first additional floor would contain 40 cells (i.e. an exact replica of the existing accommodation spurs) and the upper floor two wings with 20 cells for young people and two wings with rooms for activities. This would increase the capacity of the prison by a further 180 places, creating a prison with an overall capacity of 314 places.

The CPT acknowledges that the current capacity of the prison is already too small for the number of prisoners and that the small footprint of the establishment means that there are few options to increase the capacity other than through building additional floors. Nevertheless, the Committee wishes to highlight several concerns regarding the proposed expansion of the prison.

236. The prison population in Sint Maarten has risen from 131 in 2002 to 168 in 2014 at the time of the visit, an increase of some 30%, which brings the rate of imprisonment for the territory to the equivalent of 420 per 100,000.[118] Should the additional capacity at Pointe Blanche Prison be brought into service, experience shows that it is likely to be filled which means that the rate of imprisonment could reach levels of over 750 per 100,000, resulting in Sint Maarten having one of the highest rates of incarceration in the world. The Committee considers that it would be far preferable for a strategy for the sustainable reduction of the prison population to be put in place, which ensures that imprisonment is in practice the measure of last resort at all stages of the criminal justice system, from pre-trial to the execution of sentences. In the light of experience in certain other jurisdictions, consideration might also be given to avoiding sending persons to prison for short periods. Instead, such sentences could be served in the community. The report of the Council on Law Enforcement on “Detention capacity in St Maarten” submitted to the Minister of Justice on 26 February 2014 would appear to advocate a similar approach.

---

[117] The Aruban Correctional Institution (KIA) has exactly the same design, with the staff control room situated between the ground and first floor.

[118] In Aruba the rate is 210 per 100,000 and in Curaçao closer to 200 per 100,000.

The CPT recommends that the authorities of Sint Maarten adopt and implement a coherent strategy designed to combat prison overcrowding, taking due account of the relevant Council of Europe recommendations in this area, such as Recommendation R (99) 22 concerning prison population inflation; Rec (2000) 22 of 29 November 2000 on improving the implementation of the European rules on community sanctions and measures; Rec (2003) 22 on conditional release (parole); Rec (2006) 13 on the use of remand in custody; and Recommendation CM/Rec (2010)1 on the Council of Europe Probation Rules.

237. As to the actual design of the expansion, it would appear that the 120 prisoners on the first additional floor and the 60 young people on the floor above would all use stairways which brought them down onto the existing central gallery, off which the current 120 places are located. At present, there are numerous instances of inter-prisoner violence around this gallery due to the gates to the four wings (eight spurs) not always being properly secured, thus enabling prisoners from different wings to come into contact with one another. If the pressures of an additional 180 prisoners passing through this gallery were to be added, as they must to access the outdoor exercise yards, gym and other services in the prison, managing movements through this central gallery would become even more complex and promote the likelihood of even more violent incidents.

The CPT would like to receive the comments of the Sint Maarten authorities on this matter.

Of course, the concerns raised above would be somewhat alleviated if the authorities were to take into consideration the recommendation made by the CPT in paragraph 241 below concerning cell occupancy levels. Reducing the cell occupancy level to no more than two prisoners would reduce the capacity of the prison by 100 to 214.

2. Ill-treatment

238. The great majority of the prisoners met by the CPT's delegation stated that they had no problems with the prison staff. However, a few allegations of deliberate ill-treatment of inmates by prison officers were received and quite a few accounts of abusive language by staff, notably by officers at Philipsburg Police Station.

The CPT recommends that the Sint Maarten authorities deliver the clear message to prison officers that all forms of ill-treatment, including verbal abuse, are not acceptable and will be the subject of sanctions.

239. Many prisoners told the CPT's delegation that they did not feel safe in Point Blanche Prison and several allegations of inter-prisoner violence and intimidation were received. In particular, some inmates stated that prison officers were either not aware or insufficiently attentive to the possibility of prisoners from one wing being able to mix with other prisoners from another wing when the gates leading on to the central gallery were opened. Moreover, a few inmates alleged that staff were slow to intervene when a fight among inmates broke out.[119] In addition, a few inmates stated that no action was taken by the prison authorities when they made complaints about prisoners threatening and intimidating them, and that in the past prisoners were not punished for assaulting another inmate.

In the period since the delegation's visit, the CPT was informed about a serious violent incident in Point Blanche Prison on 11 September 2014, involving a firearm and machetes. In the subsequent search of the establishment another firearm and several stabbing weapons were found. The incident has apparently led to action being taken, including a plan to set up a task force to restructure the prison. Further, the delegation received information that on 1 October 2014 an inmate had been stabbed at Simpson Bay Remand Centre.

240. Addressing the phenomenon of inter-prisoner violence and intimidation requires that prison staff be alert to signs of trouble and both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of dynamic security and care, is a decisive factor in this context; this will depend in large measure on staff being present and possessing appropriate interpersonal communication skills. It is also obvious that an effective strategy to tackle inter-prisoner intimidation/violence should seek to ensure that prison staff are placed in a position to exercise their authority in an appropriate manner. Consequently, the level of staffing must be sufficient (including at night-time) to enable prison officers to supervise adequately the activities of prisoners and support each other effectively in the exercise of their tasks. Both initial and ongoing training programmes for staff of all grades must address the issue of managing inter-prisoner violence.

In addition, a key component in the management of inter-prisoner relations is the careful assessment, classification and cell allocation of individual prisoners within the prison population.

The CPT reiterates its recommendation that the prison management of Point Blanche Prison develop a strategy to address the challenge of inter-prisoner violence, taking into account the above remarks. Further, it wishes to receive information on the investigations into the incidents mentioned in paragraph 239 and any subsequent action taken.

---

[119] However, the action of a prison officer who placed his body between two prisoners in November 2013, one of whom was slashing the other prisoner with a home-made machete, represents a singular act of self-sacrifice and professionalism.

3. Conditions of detention

a. Point Blanche main Prison

241. The material conditions were the same as those described in the report on the 2002 visit and could generally be described as satisfactory. However, the cells (10 m²) continued to accommodate up to three prisoners which made for cramped living conditions even taking into account that inmates could spend much of the day out of their cells in the corridor running the length of each spur (equivalent to 5 cells). Further, the delegation noted that several cells continued to have problems of leaking water, even after having been renovated. Prisoners also complained about a lack of cleaning products and the glare from the ubiquitous use of white paint in all outdoor areas; **an issue that can be addressed locally**.

All prisoners, section by section, were offered one hour of outdoor exercise every day.

The CPT recommends that cells of 10 m² do not accommodate more than two prisoners, and ideally that they only hold one prisoner. Further, the Committee would like to be informed of the state of repair of the prison following the renovation work, including as regards the association and exercise rooms.

242. The delegation received numerous complaints from prisoners in all sections of the prison as well as at Simpson Bay and Philipsburg Police Station about the monotonous nature of the food; notably, that the menu consisted of chicken every day. The chef was creative in finding different ways to cook chicken but the problem was, as he himself explained, that the budget was extremely limited ever since a strike by inmate kitchen workers had led the prison to employ mostly outside workers in their place on a permanent basis.

While the Committee recognises the good intentions of the prison management to ensure a reliable kitchen service, the result could be viewed over the longer term as a group punishment of all prisoners. Moreover, in almost all prisons, the opportunity for inmates to work in the kitchen provides inmates with a meaningful activity by which they can earn a little money and learn some relevant skills; it is also perceived by inmates as a highly desirable job within a prison. Further, it permits more of the budget to be devoted to food rather than employment costs.

The CPT recommends that the current approach to employing outside workers in the kitchen be reviewed, with a view to replacing them with inmates, thus enabling more funding to be spent on food stuffs and as a result providing a more varied diet to prisoners.

243. At the time of the visit, there was little in the way of purposeful activities for prisoners, with only some 20 prisoners having work while the vast majority of prisoners idled away their days.

The CPT recalls that the aim should be to ensure that all prisoners, including those on remand, spend a reasonable part of the day (i.e. eight hours or more) outside their cells, engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association. A regime which provides for varied activities, as part of an individualised sentence plan, is essential for the welfare of prisoners during their incarceration as well as being a vital component in the preparation for release.

The CPT reiterates its recommendation that activities for prisoners be further developed, with a view to ensuring that all prisoners (including those on remand) can spend a reasonable part of the day (i.e. 8 hours or more) outside their cells engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport; recreation/association.

b. Simpson Bay Remand Centre

244. Simpson Bay was built as an immigration detention centre and a Judicial Permission of 25 November 2011 and signed by the Minister of Justice was granted to allow the premises to be used as a prison for 18 months.

At the time of the visit, all 11 female remand and sentenced prisoners were being held in a large dormitory on the first floor. The room was in a decent state of repair and had reasonable access to natural light and adequate artificial lighting. However, there was little ventilation and the toilets, lined up in a row, provided no privacy as there was no door enclosing each cubicle.

As for the regime, the women had access to an association room from 8 a.m. to 5 p.m., where they could watch television, and an effort had been made to initiate a series of activities such as anger management, Bible and English language classes for two and a half hours twice a week. Moreover, the women were not offered any outdoor exercise. Taken together this does not constitute a sufficient programme of purpose activities.

The conditions of detention in the two dormitories on the second floor, which were accommodating male prisoners, were of a similar standard. Although they were offered access to an outdoor exercise yard every day, they were not provided with any activities.

While bearing in mind that holding prisoners at Simpson Bay is supposed to be a temporary measure (up to some four months at the time of the visit), it is nevertheless important that prisoners are provided with decent material conditions and that they are offered some purposeful activities. Further, they should all be offered at least one hour of outdoor exercise every day.

The CPT recommends that the necessary steps be taken to remedy the deficiencies outlined above, for as long as Simpson Bay continues to be used for holding prisoners.

4. Prison staff

245. At the time of the visit, Point Blanche Prison had 104 staff of whom 85 were prison officers which in theory should be sufficient. However, sick-leave levels were extremely high averaging about 30% and a number of officers were suspended pending dismissal. Further, both Simpson's Bay Remand Centre and Philipsburg Police Station were staffed by prison officers on a rotation basis. As a result, the number of officers on each shift in the main prison area was extremely limited; for example, only two officers were on duty in the central gallery of the accommodation block in the afternoons. The low staffing levels meant that it was not unusual for officers to work long hours of overtime and, not surprisingly, the delegation observed that little was done to promote positive relations between staff and prisoners.

It is essential that the excessive amounts of overtime worked by some staff is reduced and that the rates of absenteeism among staff are tackled. This will require *inter alia* recruiting more staff and addressing staff management issues such as ensuring that the promotion system is more meritocratic. Several staff members expressed their desire to see the prison better equipped to address the needs of prisoners, and putting in place a staff development programme would contribute to the professionalisation of staff and assist towards creating the possibility of a rehabilitative regime in all constituent parts of the prison.

Professionalisation of staff should see the role of a prison officer evolving from that of essentially a "turn-key" with no responsibility other than that of static security. Instead, prison officers should be encouraged to extend their role into interacting positively with inmates, taking part in rehabilitation programmes and being an integral element in a multi-disciplinary approach towards prisoners' welfare. This would not only provide a far more challenging and interesting job for the prison officers but it would also address the rehabilitation aspect of prison which has to date been moribund. Of course, this would necessitate introducing far more training for those prison officers capable and willing to take up this additional role.

The CPT recommends that the Sint Maarten authorities take the necessary measures to increase the number of prison officers employed as well as to develop the capacity and role of prison officers, in the light of the above remarks. In parallel, the amounts of overtime should be reduced and the levels of, and reasons for, absenteeism tackled.

246. More generally, it is important that prison officers be provided with regular in-service training courses to improve their skills and knowledge, and also receive refresher courses.

The CPT recommends that all prison officers be offered regular in-service training.

5. Health-care services

247. At the time of the visit, a general practitioner visited the prison once a week for four hours and there were three full-time nurses, all of whom were present in the establishment from 7.30 a.m. to 5 p.m. five days a week. Outside of these hours and at weekends, a nurse was on call. In addition, a psychiatrist visited every fortnight. Specialist consultations were arranged with the hospital in Philipsburg and posed no specific difficulties. However, there was no visiting dentist and the waiting list for an outside consultation was many months.

For a prison with an actual population of over 160 inmates, in three locations, the number of visiting hours of the doctor was too low.

The CPT recommends that the presence of the doctor at the prison be increased to the equivalent of a half-time position. Further, provision should be made for a dentist to visit the prison once a week and for the dentist's surgery to be properly equipped.

248. The CPT's delegation noted favourably that every newly admitted prisoner to Point Blanche was seen by a nurse within 24 hours of arrival. The medical assessment included screening for infectious diseases (including HIV and hepatitis C), mental health problems and addictions; blood samples were sent to an outside laboratory. The written consent of the prisoners was obligatory before any blood samples were taken.

249. The CPT has consistently pointed out that prison health-care services can make a significant contribution to the prevention of ill-treatment of detained persons through, *inter alia*, the systematic recording of injuries, whether vis-à-vis new arrivals or following a violent episode in prison. In this respect, the health-care services at Point Blanche Prison generally recorded injuries observed in sufficient detail. However, in addition to a description of any injuries, the doctor should note down a full account of the statements made by the person concerned which are relevant to the medical examination. Further, a doctor should indicate as far as possible the consistency between any allegations made and the objective medical findings; this will enable the relevant authorities to properly assess the information set out in the record. Such an approach was not being followed at Pointe Blanche. In addition, it is essential that all such reports are transmitted to the relevant authorities.

The CPT recommends that measures be taken to ensure that the record drawn up after the medical examination of a prisoner – whether newly arrived or following a violent incident in prison – contains:

(i) an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment);
(ii) a full account of objective medical findings based on a thorough examination;
(iii) the doctor's observations in the light of i) and ii) indicating the consistency between any allegations made and the objective medical findings.

Recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with "body charts" for marking traumatic injuries that will be kept in the medical file of the prisoner. If any photographs are made, they should be filed in the medical record of the inmate concerned. In addition, documents should be compiled systematically in a special trauma register where all types of injuries should be recorded.

The results of every examination, including the above-mentioned statements and the doctor's opinions/observations, should be made available to the prisoner and, with the consent of the prisoner, to his or her lawyer. Further, the existing procedures be reviewed in order to ensure that whenever injuries are recorded which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the report is immediately brought to the attention of the relevant prosecutor regardless of the wishes of the person concerned.

250. As regards medical confidentiality, the CPT's delegation found that it was generally respected. Medical examinations took place out of the hearing and sight of custodial staff. Further, medical documentation was only accessible to health-care staff; it should also be mentioned that the medical files were very well ordered and meticulously kept.

The delegation also observed that nursing staff prepared medication in dosage boxes which were subsequently distributed by prison officers after 5 p.m. and at weekends. Consequently, medication and its dosage are clearly visible to the custodial staff. Such a practice could compromise medical confidentiality requirements and does not contribute to the proper establishment of a doctor-patient relationship. In the CPT's view, medication should be distributed by health-care staff.

The CPT recommends that the authorities draw up a list of medication that should in every case be distributed by health-care staff (such as anti-psychotics, methadone and antiretroviral drugs) and to put in place procedures for the distribution of other medication that guarantees confidentiality. Further, the health-care service should ensure that the drugs chart, showing which prisoner was provided with which medication and when, is properly maintained, and that all missed medication dosages are recorded.

251. The delegation was informed that prisoners with mental health problems were no longer transferred to Curaçao for treatment. Instead, the prisoners would be treated at Pointe Blanche Prison. At the time of the visit, there was one prisoner who had been diagnosed with a psychiatric disorder. He had been transferred from an ordinary accommodation wing to a single-occupancy cell in the small four-cell protection unit a month prior to the visit as his behaviour was judged to be "strange". In early May 2014, he had refused to be medicated after the psychiatrist recommended that he continue to receive his moditen depot prescription every three weeks. As a result, medical staff from the Mental Health Foundation, which provides psychiatric services to the prison and in the community, were called to the prison and forcibly injected him.

The CPT considers that prisoners suffering from a serious mental disorder should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. Pointe Blanche Prison possessed neither the staff nor the facilities to hold prisoners suffering from a serious mental health disorder.

The CPT acknowledges the challenge facing the authorities of having to establish an institution which would be capable of providing the different types of specialist care required based on treatment and rehabilitation, for the rather small numbers of patients involved.

The CPT recommends that the Sint Maarten authorities take the necessary steps to ensure that prisoners suffering from a serious mental disorder are cared for in an adequately equipped hospital environment. Further, it would like to receive details of the treatment afforded to the above-mentioned prisoner since the time of the visit.

6. Other issues

252. As regards discipline, the CPT's delegation noted that there had been 55 cases in the 13 months prior to the visit. Due to the lack of space, recourse to solitary confinement was rare and most punishments consisted of a denial of visits or of bringing in food from outside.

It was, however, difficult to obtain a clear overall picture in relation to discipline and the use of force due to the way in which the records were kept. It is envisaged that the new computer system will enable better record keeping and the possibility to extract the information in a way that is useful for management and oversight purposes. **The CPT would like to receive confirmation that a new record keeping procedure for disciplinary offences and use of force is now in place.**

253. A number of prisoners complained about the manner in which cell searches were carried out by a special unit of officers wearing balaclavas and accompanied by dogs. They stated that during the last search in December 2013, the officers had thrown all the belongings in the cell onto the floor and trampled over them, breaking several personal possessions and dirtying clothes and bedding.

The CPT wishes to emphasise that it is opposed to the wearing of balaclavas by special-purpose units carrying out operations within penitentiary establishments. The Committee recognises that, for operational and/or security reasons, the wearing of protective helmets may be necessary. However, it should be ensured that subsequent identification of the officers concerned is always possible by the relevant authorities and by prisoners, through not only a clearly distinctive badge but also a prominent identification number on each uniform/helmet. In addition, interventions of this type should be video recorded (e.g. with tactical cameras as part of the equipment of the penitentiary officers concerned). A prisoner from the cell being searched or an independent observer should be present to ensure the search is carried out correctly.

The CPT recommends that a clear protocol for cell searches be drawn up, taking into account the above remarks.

254. The CPT welcomes the general rule to permit “open” visits at Point Blanche Prison. The restrictions on visitors bringing in cakes and drinks were legitimate in order to cut back on contraband entering the establishment.

However, the delegation received a number of complaints from foreign national prisoners about the limited possibilities of contact with their families. The CPT wishes to re-emphasise the need for some flexibility as regards the application of rules on visits vis-à-vis prisoners whose families live far away.

The CPT recommends that the relevant rules be amended so as to make it possible in appropriate cases to accumulate individual visit entitlements.

255. As regards the use of the telephone, a card system was in operation and prisoners could access the phones when they wanted. However, many of the card telephones at Point Blanche were not functioning, which for those prisoners, particularly foreign nationals, who did not have access to a mobile phone caused considerable frustration. At Simpson Bay, there was also a problem with access to a telephone for female prisoners. They could only access an official mobile telephone every morning for about one hour, which was not only expensive but this access was also at a time when neither their children nor other family members were available.

The CPT recommends that the card phones at Point Blanche be repaired. Further, access to a telephone should be improved at Simpson’s Bay.

256. There was no record of any complaints made by inmates, and prisoners stated that there was no point in filing a complaint as no response would be received and no action taken. Instead, the delegation was told that complaints would be made through a prisoner’s lawyer.

Further, inmates appeared to have no confidence in the Supervisory Committee taking up their complaints.

The CPT considers that it is essential for Point Blanche Prison to put in place a properly functioning internal complaints system; for example, prisoners ought to be able to make written complaints at any moment and place them in a locked complaints box on a prison landing (forms should be freely available); all written complaints should be registered centrally within the prison before being allocated to a particular service for investigation or follow up. In all cases, the investigation should be carried out expeditiously (with any delays justified) and prisoners should be informed within clearly defined time periods of the action taken to address their concern or of the reasons for considering the complaint not justified. In addition, statistics on the types of complaints made should be kept as an indicator to management of areas of discontent within the prison. Of course, prison officers should be encouraged and empowered as far as possible to resolve complaints themselves and if this is not possible recourse to a written procedure should be promoted.

The CPT recommends that the Sint Maarten authorities review the current system of complaints, taking into account the above remarks.

257. There was once again considerable confusion among the prisoners concerning the calculation of their respective *release dates*. Many inmates said that they did not know whether they had to serve two-thirds or four-fifths of the sentence, and several alleged that the initial date provided to them was changed when they approached it. This is surprising since the current Criminal Code of Sint Maarten clearly states in Article 131 that conditional release may be granted after two-thirds of sentences exceeding one year and that police detention and remand count towards this period. Further, Article 135(2) of the Criminal Code states that conditional release may be postponed to a later date or not be granted at all, upon the advice of the parole board. It is essential that prisoners be clearly informed of the date at which point they will become eligible for conditional release and that the procedures for keeping a person in prison beyond this date are transparent and any decision taken reasoned and reviewable, with a copy provided to the prisoner.

The CPT recommends that all prisoners be accurately informed of their release date from prison as soon as possible after their admission to prison,[120] in light of the above remarks.

Further, in light of the decision of the Constitutional Court of Sint Maarten of 8 November 2013, in which it held that limiting the possibility of early conditional release to nationals and residents of Sint Maarten was unfair, **the CPT would like to be informed whether any foreign nationals have been granted conditional release and, if so, under what terms.**

120 See Rule 30.3 of the European Prison Rules (2006).

APPENDIX

LIST OF THE NATIONAL AUTHORITIES AND ORGANISATIONS WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS

A. Authorities of the Netherlands

Ministry of Justice

Ivo OPSTELTEN	Minister of Justice and Security of the Netherlands
Mariette HORSTINK	Head of Bureau International Affairs, Custodial Institutions Agency
Martin KUIJER	Liaison officer to the CPT
Clarinda COERT	Deputy liaison officer to the CPT

Ministry of the Interior and Kingdom Relations of the Netherlands

Erwin ARKENBOUT	Director of Kingdom Relations

Prison and law enforcement authorities in Bonaire

Patricia HASSELL	Director, JICN, Location Bonaire
Wibo DE VRIES	Deputy Director, JICN, Location Bonaire
Hildegard BUITINK	Chief of Police, Dutch Caribbean Police Force

Other authorities

Peter DE GRAAF	Vice-Chair, Prison Supervisory Committee, JICN, Location Bonaire

B. Authorities of Aruba

Ministry of Justice

Arthur DOWERS	Minister of Justice
Luella EMERENCIA	Legal Advisor
Elvira CROSS	CPT Inspector
Fred WIJENBERG	Chair Management Team, Correctional Institute Aruba
Dick VAN LEENEN	Member Management Team, Correctional Institute Aruba
Achmed NUNES	Policy Advisor Management Team, Correctional Institute Aruba

Trudy HASSELL	Police Commissioner, Aruba Police Force
Elio BLIJDEN	Chief Supervisor of Foreign Nationals, Aruba Police Force
Marcel MADURO	Director, Public Service Investigation Agency (Landsrecherche)
Robert TROMP	Deputy Director, Public Service Investigation Agency (Landsrecherche)

Ministry of Health

Jerry STARRING	Advisor, Ministry of Health
Renate VAN DONGEN	Manager, PAAZ (Psychiatric Ward of the General Hospital) Aruba
Nathalie KINGSALE	Psychiatrist, PAAZ (Psychiatric Ward of the General Hospital) Aruba

Judicial authorities

Marc VAN ERVE	Acting Attorney General
Peter BLANKEN	Chief Public Prosecutor

Other authorities

Steve GIBBS	Head of Department, National Drug Council of Aruba

C. <u>Authorities of Curaçao</u>

Ministry of Justice

Nelson NAVARRO	Minister of Justice
Tiara HASELHOEF-SINT JAGO	Policy Director, Ministry of Justice of Curaçao
Silvio LINDO	Senior Policy Advisor, Ministry of Justice of Curaçao
Ivett ATACHO	Advisor Policy Support, Ministry of Justice of Curaçao
Gimena VAN DER GEN	Deputy Director Judicial Care, Execution and Resocialisation
Urny FLORAN	Director, Centre for Detention and Corrections Curaçao
Ton GOLSTEIN	Project Leader, Centre for Detention and Corrections Curaçao
Charette ALBERTOE-PINEDO	Director, Judicial Youth Institute Curaçao
Franklyn GIRIGORIE	Member Management Team, Curaçao Police Force
Albert SCHOOP	Head Special Units Division, Curaçao Police Force

Ministry of Health

Anthony GUILLERMO	Policy Advisor, Ministry of Health, Environment and Nature of Curaçao
Waldi OOSTBURG	Director, Capriles Psychiatric Clinic, Curaçao
Elzien VEGH-JANSMA	Care Manager, Capriles Psychiatric Clinic, Curaçao

Judicial authorities

Guus SCHRAM	Attorney General for Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba
Philomijn VAN LOGTEN	Acting Chief Public Prosecutor
Monique DENNAOUI-SIMON	Public Prosecutor

Other authorities

Glenn CAMELIA	Member for Curaçao, Council on Law Enforcement
Edward VAN DER BUNT	Chair, Prison Supervisory Committee, Curaçao
Jennifer LINDO-SNIJDER	Director, Family Guardianship Institute (*Stichting GVI*), Curaçao
Michel MARIJNEN	Chair, Progress Committee Plan of Action Curaçao

D. <u>Authorities of Sint Maarten</u>

Ministry of Justice

Dennis RICHARDSON	Minister of Justice
Ron VAN DER VEER	Director of the Cabinet of the Minister of Justice
Ron VERHAAR	Advisor, Cabinet of the Minister of Justice
Eric NOORDHOEK	Chief Public Prosecutor
Karola VAN NIE	Public Prosecutor for Juveniles
Peter DE WITTE	Chief of Police
Edward ROHAN	Pointe Blanche Prison Director

Other authorities

E. <u>Persons active in the CPT's field of interest</u>

Annemarie MARCHENA-SLOT	University of Curaçao, Dean of the Law Faculty
Paula JANSSEN	Lawyer